SUPREME COURT OF THE UNITED STATES.

No. ~~350.~~ 93

THE UNITED STATES, EX REL. DAVID B. MOSES, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF KEOKUK, IOWA, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 3, 1866.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 358.

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STATE OF IOWA, *Lee county:*

Subscribed and sworn to by William Patterson, as mayor of city of Keokuk, Iowa, and President of city council, and by B. S.
45 Merriam, clerk of city council, and H. K. Love, as treasurer of said city, this 10th day of October, A. D. 1865, before me, D. H. Le Suer, clerk of the district court of Lee county, Iowa.

Witness my hand and seal of said court.

[SEAL.] D. H. LE SUER, *Clerk D. C.*

STATE OF IOWA, *Lee county:*

Subscribed and sworn to this 10th day of October, A. D. 1865, by William Patterson, mayor of the city of Keokuk, and president of city council, and by B. S. Merriam, clerk of the city council of said city, and by H. K. Love, treasurer of the said city, before me, Edward Mumm, a notary public in and for Lee county, and State of Iowa.

Witness my hand notarial seal on said day.

EDW'D MUMM,
Notary Public, Lee co., Ia.

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 13th day of October, A. D. 1865, defendants, by their attorney, filed in said clerk's office, their transcript of record from Lee county, district court of Iowa. Which said transcript is in words following:

46 In the district court of the 1st judicial district held at Keokuk State and county aforesaid, his honor Francis Stringer, judge, presiding.

STATE OF IOWA, *County of Lee:*

Be it remembered that heretofore, to wit, on the 24th day of August, A. D. 1863, a petition was filed in the above-named court, in words and figures following, to wit:

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, Uriah Raplee, pl'ffs,
vs.
THE MAYOR AND CITY COUNCIL OF THE CITY of Keokuk, and the collector of said city, def'ts.

47 Page 1. Your petitioners, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, Uriah Raplee, pl'ffs herein, represent that they are citizens and residents of the city of Keokuk, Lee county, and State of Iowa, and are the owners of property, real and personal, therein, subject to taxation.

2d. Pl'ffs, for themselves and other citizens too numerous to be

joined in this suit, further state that heretofore, to wit, on or about the 1st day of January, A. D. 1856, the city council of Keokuk, a municipal incorporation existing under the laws of the State of Iowa, by resolution of the said city council, subscribed 400,000 dollars to the capital stock of the Keokuk, Fort Des Moines & Minnesota Railroad Company, an incorporation existing under the laws of the State of Iowa, to enable the said company to construct a railroad from the city of Keokuk, in Lee county, to the city of Fort Des Moines, in Polk county, in said State.

Pl'ffs further state that the mayor of the said city did, in pursuance of a resolution of the city council of said city, did execute and issue and deliver to the said railroad company, in payment of said subscription, 400 bonds in the name of said city, of 1000 dollars, of said date,
payable 20 years from date, with 8 per cent. per annum inte-
48 rest, payable semi-annually, according to certain interest coupons attached thereto, all of which bonds, except 2, are outstanding and unpaid.

2d. Pl'ffs further state that the said city council of said city did, on or about July 1st, 1856, subscribe in name of said city one hundred thousand dollars to the capital stock of the Mississippi & Wabash Railroad Company, a corporation existing under the laws of the State of Illinois, to aid in building a railroad in said State of Illinois, and did execute therefor, through the mayor of the said city, the bonds of the said city, being one hundred bonds of one thousand dollars each, payable 20 years from date, with 8 per cent. interest p'r annum, payable semi-annually, according to the tenor and effect of certain interest coupons thereto attached, which bonds are wholly outstanding and unpaid.

3d. And the said city council of said city did, by resolution of said board of March 1st, 1856, in behalf of said city, subscribe one hundred thousand dollars to the capital stock of the Keokuk, M't Pleasant, and Muscatine Railroad Company, an incorporation existing under
the laws of the State of Iowa, to aid said co. in building a
49 railroad from the city of Keokuk, Iowa, to the city of Muscatine, Iowa, and did in the name of said city, through the Mayor thereof, execute and deliver to said railroad company 100 bonds, of 1,000 dollars each, payable 20 years from date, to said railroad company or bearer, with 8 p'r cent. per annum interest, according to certain interest coupons attached thereto, which bonds are yet outstanding and unpaid.

4. Pl'ff further states that the city council of said city did, July 3d, 1857, through the mayor of said city, and in the name of the said city, execute and deliver to said Mississippi and Wabash Railroad Co., 30 other bonds of 1,000 dollars each, to aid in building said road, and in payment of further subscription of stock thereto, 16 of said bonds payable Sept. 1st, 1859, and 16 of them payable Sept. 1st, 1861, and 18 of them payable Sept. 1st, 1863, to said railroad co. or bearer, and all drawing interest at 8 p'r cent. per annum, as per interest warrants or coupons attached, and none of said bonds have been paid and are all outstanding.

5. Pl'ff further states that the city council of said city did, on the 1st day of May, 1857, in the name of said city, by her mayor, execute, issue, and deliver to the said Keokuk, Fort Des Moines, and
50 Minnesota railroad Co., 150 other and additional bonds, of 1,000 dollars each, in payment of a subscription to the capital stock of said railroad company, and payable, 50 of them in one year, and 50 of them in 2 years, and 50 of them in three years from date, with 10 per cent interest p'r annum, payable semi-annually, according to tenor and effect of certain interest coupons thereto attached, which bonds are wholly outstanding and unpaid.

Pl'ffs state that all of the said bonds hereinbefore described, said bonds and coupons have been assigned by the said several railroad companies to which they were issued, and are now in the hands of third persons, who bought the same in open market, before maturity, for a valuable consideration, and that the holders of said bonds are unknown to pl'ffs, and are too numerous to be made parties to this suit.

6. Pl'ffs further state that the city council of said city had no authority to make the said subscription to said railroad companies, or any of them, nor to execute, or issue, or deliver to them, or any of them, the said bonds of said city, with the coupons annexed in the name of said city; that the said city received no consideration for the said bonds or coupons except certificates of stock in the
51 said several railroad companies, to an amount equal to the bonds issued, that the said railroad companies were organized and formed to construct railroads without the limits of the said city, and said railroad companies are private corporations for procuring profit, in no way connected with the city, and from which said city derives no profit or emoluments.

7. That said city of Keokuk is a municipal, and had no authority under the charter to construct railroads without her corporate limits, or to issue bonds to aid in the construction of any of the said railroads.

8. That said bonds were executed and issued by the proper officers of said city, under the direction of said city council, and in pursuance of a resolution thereof, without authority of law, and were and are absolutely void.

That the issuing of the said bonds was a fraud upon the rights of pl'ffs; that the several acts of the legislature of the State of Iowa, authorizing the issue of the bonds described in the said counts of pl'ffs petition, being an act entitled and approved , and the acts of legislature of said State, curing,
52 establishing, and making legal and binding the said bonds described in said counts of this petition being an act entitled an act and approved, to which acts reference is hereby made, were and are null and wholly unconstitutional and void, and did not authorize the issuing of the said bonds, or any of them, or legalize or make binding the said bonds, or any of them, which had been issued.

9. Pl'ff further states that the city council of the said city have

levied a special tax of one per cent. upon the assessed value of all the taxable property, real and personal, within the limits of the said city subject to taxation for State and county purposes, according to the assessment made by the city assessor for the year A. D. 1863, to be applied towards the payment pro rata of the interest due on said bonds, and the clerk of the said city, in pursuance of a resolution of said city council, has made out a tax list of all the property in said city, including that of your petitioners, in accordance with the said assessment and levy.

53 10. Pl'ffs further state that the collector of said city, in pursuance of a resolution of the city council of said city, is now about to collect the said special tax for the payment of interest upon said bonds, and is about to proceed and advertise and sell, under the laws and ordinances of the said city of Keokuk, all the property, real, personal, and mixed, within the limits of said city, subject to taxation, including the property of your petitioners, for the payment of the said special tax, which, under the laws and ordinances of said city, has been delinquent.

11. Pl'ffs state that the said bonds issued as aforesaid in the name of the said city for subscription of stock to said railroad companies without authority of law amount now, with the accumulated unpaid interest, to over one million of dollars, which is a great and ruinous burden and incumbrance upon the property of your petitioners lying without the said city, and upon the property of all the citizens of said city lying within the limits thereof; that unless restrained by your honorable court the said city collector will proceed to advertise and sell the property of your petitioners, and pay the said special tax levied as aforesaid, by which your petitioners, and all other property holders will sustain great loss and damage, and your petition-

54 ers are without remedy at law in the premises.

12. Pl'ffs further state that the said city council and mayor of the said city are about and intend and threaten to proceed from year to year to levy a further and additional special tax each year upon all of the taxable property in said city for the payment of the principal and interest of the said bonds as they mature, unless restrained from so doing by your honorable court, and to sell the property of pl'ffs and other property-holders for that purpose, by which pl'ffs and others will sustain further and additional loss and damage. Pl'ffs state that the said city council have no authority to levy any tax for the payment of principal or interest upon said bonds, and the collector of said city has no authority in law to collect said tax, and the taxable property of your petitioners and others in said city should not be made liable for the payment of said tax.

Wherefore pl'ffs make the said city council and the mayor and collector of said city defendants herein, and pray that they may be required to answer this petition; and pl'ffs further pray that the collectos of the said city be perpetually enjoined from collecting said tax or any tax for the payment of said bonds, or the interest

55 thereon, and from advertising or selling any of the taxable property within the city for that purpose; that the city coun-

cil and mayor of the said city, and their successors in office, be perpetually enjoined from levying any special or general tax or assessment upon any of the taxable property within the limits of the said city for the payment of the principal or interest of the said bonds, and that each and all of the said defendants, and their successors in office, be restrained and forever enjoined from doing any act or thing in or towards levying or collecting any tax or assessment, general or special, upon the taxable property in said city for the payment of the principal and interest upon said bonds, or any of them, and from receiving or collecting any tax for that purpose, and that the levy of the said special tax be declared illegal, null, and void, and no lien upon any of the property subject to taxation within the limits of the said city, and said property be declared free and clear of the lien of said tax, and that to this end a writ of injunction issue, which, upon final hearing, your petitioners pray may be perpetual on behalf of pl'ffs and all other property-holders of said city upon said defendants and their successors in office, and for other relief equitable in
56 the premises.

RANKIN & McCRAREY,
Att'ys for Petitioners.

STATE OF IOWA, *Lee county, ss:*

I, H. B. Ten Eyck, one of the *the* pl'ffs in the above-entitled suit, being duly sworn, on oath state that I believe the allegations contained in *in* foregoing petition are true.

H. B. TEN EYCK.

STATE OF IOWA, *Lee county, ss:*

Subscribed and sworn to by H. B. Ten Eyck, before me and in my presence, this 20th day of August, A. D. 1863.

Witness my hand and notarial seal.

[SEAL.] J. D. SPRINGER, *N. P.*

Following is an order allowing the injunction, to wit:

STATE OF IOWA, *ss:*

Let the writ of injunction issue as prayed for, the petitioners giving bond in the sum of ten thousand dollars ($10,000) to the approval of the clerk of the district court.

Kiosanqua, Aug. 21st, 1853.

GEO. G. WRIGHT,
Judge Supreme Court.

To the clerk district court Lee county, Iowa.

57 And afterwards, to wit, on the 24th day of August, a bond was made, in words and figures following:

Know all men by these presents that we, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, and Uriah Raplee, principals, and A. L. Connable, sureties, are

held and firmly bound unto the city of Keokuk and the collector in the penal sum of ten thousand dollars, for the payment of which we obligate ourselves.

The condition is that the said principals have filed their petition in chancery in the office of the clerk of *the clerk of* the district court of Lee county, Iowa, at Keokuk, against the mayor and city council of the city of Keokuk and the collector, praying an injunction to prevent the collection of taxes to pay the interest on certain railroads, bonds, &c., and an injunction has been allowed. Now, if the said pl'ffs will pay all the damages that defendants may sustain by reason of the wrongful allowance of said injunction, and save said defendants harmless from all damages in case said injunction is dis-
58 solved, then this obligation is void; otherwise, in *in* full force.

Witness our hands August 24, 1863.

H. B. TEN EYCK.
C. H. PERRY.
J. B. HOWELL.
J. W. CLEGHORN.
A. L. CONNABLE.
R. B. OGDEN.
U. RAPLEE.

Approved and filed Oct. 9th, 1863.

CHARLES DOER, *Cl'k D. C.*,
By EDW'D MUMM, *Dep.*

And a writ of injunction was issued of date October 9th, 1863, as follows:

STATE OF IOWA, *Lee county, ss:*

To the mayor and city council of the city of Keokuk, and the collector of said city, your agents, attorneys, and servants, and each and every of them:

Whereas H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, and Uriah Raplee, have filed their bill in chancery in our court, within and for the county of Lee, against you, the said mayor and city council, in the city
59 of Keokuk, and the collector of said city, touching the matters therein complained of, and which bill is therein pending; and whereas said H. B. Ten Eyck *et al.*, above named, have obtained the allowance of an injunction from the Hon. Geo. F. Wright, judge of the supreme court of Iowa, as prayed for in said bill, and the said H. B. Ten Eyck *et al.*, having filed a bond, with approved security, as required by the order of allowance:

We, therefore, in consideration of the premises, do strictly command and enjoin you, and your agents, attorneys, and servants, and all and every of you, that you and every of you, and your successors in office, do altogether desist from levying any special tax or general tax or assessment upon any of the taxable property within the limits of the city of Keokuk, for the payment of the principal or interest of certain bonds mentioned in said bill, (as railroad bonds,) and that each and all of you, and your successors in office, be restrained and

forever enjoined from doing any act or thing in or towards levying or collecting any tax, general or special, or assessment upon the taxable property of the said city, for the payment of the principal or interest upon said bonds, or any of them, and from securing or collecting any tax for that purpose, under the penalty of the law hence arising.

Witness Charles Doer, clerk of the district court in and for said county, this 9th day of Oct., 1863.

CHARLES DOER, *Clerk.*
By EDW'D MUMM, *Dep.*

Upon which is indorsed the return of the sheriff in words and figures as follows :

This writ came into my hands on the 12th day of April, 1864, and on same day I served the same on A. G. Richardson, collector of the city of Keokuk, C. F. Davis and Wickersham, members of the city council of the city of Keokuk, by reading the same to each of them in the city of Keokuk, Lee county, Iowa ; and on the 13th day of April, 1864, I served the same on John Cleghorn, George Montague, and Cicero Hughes, members of the city council of the city of Keokuk, and J. M. Hiatt, mayor of said city, Lee county, Iowa, by reading the same to each of them in the city of Keokuk, Lee county, Iowa ; and on the same day I served the same on J. H. Caton and Wm. Abbott, members of city council of said city of Keokuk, by reading the same to each of them in the city of Keokuk, Lee county, Iowa. H. B. Ten Eyck, a member of said city council, cannot be found in my county.

ISRAEL ANDERSON,
Sheriff of Lee County, Iowa.

I also, on the 18th day of April, 1864, at 9 o'clock, p. m., served the within writ on the mayor and city council of the city of Keokuk, in session, the mayor and councilmen being all present, by reading the same to them personally while they were in session, in the city of Keokuk, Lee county, Iowa.

ISRAEL ANDERSON,
Sheriff of Lee County, Iowa.

And afterwards an original notice was issued and served, in words and figures as follows :

STATE OF IOWA, *Lee county, ss:*

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, Uriah Raplee.
vs.
THE MAYOR AND CITY COUNCIL OF the city of Keokuk and the collector of said city.

You are notified that there is now on file in the office of the clerk of the district of Lee county, Iowa, at Keokuk, the petition of H. B.

Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee, claiming against the defendants, the mayor and city council of the city of Keokuk, and the collector of said city, an injunction restraining the defendants from levying and collecting taxes of the plaintiffs and out of their property in the city of Keokuk, and the citizens and residents of Keokuk, Lee county, Iowa, to pay the interest or principal of certain bonds issued by said city to certain railroad corporations in the petition described; said petition alleges that said bonds were issued without the authority of law, and that the defendants are proceeding to collect the interest due on said bonds by distraining, &c.

Said petition prays for a perpetual injunction and for a general relief.

Unless you appear and answer said petition on or before the 2d day, at noon, of the September term, 1863, of said court, commencing on the first Monday of September, a decree will be taken as if
63 confessed, and in accordance with the prayer of the petition.

RANKIN & McCRARY,
Att'ys for Pl'ffs.

Upon this motion is indorsed the following petition by the sheriff:

This motion came into my hands August 27, 1863, and I served the same on the mayor of the city of Keokuk, by reading the same personally to George B. Smyth, mayor of said city, and by delivering to him a true copy thereof in Keokuk, Lee co., Iowa, Aug. 27, 1863; served the same also on the collector of said city, by reading same personally to A. G. Richardson, the collector of said city, and by delivering to him a true copy thereof, in Keokuk, Lee co., Aug. 27, 1863; served the same also on the city council of the city of Keokuk, by reading same personally to B. S. Merrian, clerk of said city council, and by delivering to him a true copy thereof in Keokuk, Lee county, Iowa, August 27, 1863.

N. G. HEDGES,
Sheriff of Lee co., Iowa,
By D. B. SMITH, JR., *Deputy.*

And afterward, to wit, on the 24th day of August, A. D.
64 1863, a demurrer was filed, in words and figures following:

Demurrer by def'ts.

District court of Lee county, Iowa, at Keokuk.

H. B. TEN EYCK and OTHERS, pl'ffs,
v.
THE MAYOR OF CITY OF KEOKUK and OTHERS, def'ts.

Now comes the defendants, the mayor of the city of Keokuk, by Henry Strong, their attorney, and demur to the petition of pl'ffs, and state the said petition does not state facts sufficient to constitute a cause of action, and entitle the pl'ffs to the relief claimed.

1. Petition shows that said bonds, executed and issued in name of the city of Keokuk were regularly issued by the proper officers of the said city, in pursuance of a resolution of the city council of said city, in payment of a subscription by said city to the railroads named.

2. The said city of Keokuk, through her proper officers, had a right to subscribe to the capital stock of said railroad, and to issue the bonds of the city in payment thereof, and the city council
65 of said city have a right to levy a tax upon the taxable property in said city, in payment of the interest and principal of said bonds as they mature, and the city collector is authorized and legally bound to collect the said tax after the same has been levied.

3 Under the constitution and laws of the State of Iowa, the said city of Keokuk, through her proper officers, had full authority to execute and issue the said bonds; and pl'ffs' petition shows that said city did receive a valuable consideration for the issuing of said bonds, in an equal amount of certificate of stock of the several R. R. companies to which said bonds were issued.

4. Pl'ffs' petition shows upon its face that said bonds are now in the hands of innocent holders, who bought them before maturity for valuable consideration, and being in the hands of such holders they are binding upon the city.

5. Pl'ffs petition shows that said bonds described in the counts of their petition were ratified and legalized by an act of the general assembly of the State of Iowa, and are therefore legal and binding upon said city.

66 6. Pl'ffs petition shows that the bonds described in the counts of their petition were authorized by an act of the general assembly of the State of Iowa, and were issued in pursuance of said act, and are therefore legal and binding upon said city.

7. The petition of pl'ffs shows that said bonds are legal, valid, and binding upon said city, and the property of pl'ffs, and other persons in said city, is liable to be assessed and taxed in the manner prescribed by law for the payment of same, as they mature.

8. There is no equity in petition of pl'ffs as shows upon its face, and petition shows that pl'ffs are not entitled to the relief claimed, and def'ts pray that the injunction granted be dissolved and def'ts' bill dismissed.

HENRY STRONG, *Att'y for Defendants.*

And afterwards, to wit, on the 19th day of September, A. D. 1863, a decree embodying a bill of exception was filed, as follows :

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. W. Perry, Arthur Wolcott, John W. Leghorn, and Uriah Raplee
67 *vs.*
THE MAYOR and CITY COUNCIL OF THE city of Keokuk, the collector of said city, &c.

This cause came up for hearing on the petition of pl'ffs, property-

holders of the city of Keokuk, and representatives of all of the holders of property in said city, and the demurrer of defendants; the former represented by Rankin & McCrarey, their attorneys, and the latter by Henry Strong, their attorney, and the court, being advised in the premises, finds that said city, through its mayor and council, about to levy a heavy tax on the taxable property of the plaintiffs and other property-holders, to pay the interest on certain railroad bonds in the petition described.

The court further finds that said bonds are void and of no binding obligation, they having been issued without the authority of the law; the court, therefore, overrules the demurrer.

And the defendants having decided to stand on their demurrer and not answer, the court orders, adjudges, and decrees that the temporary injunction allowed in this case be made perpetual.

68 It is further ordered, adjudged, and decreed that the defendant, the city of Keokuk, through its officers aforesaid, levy no taxes for the purposes specified in the petition, and that the collector of said city, and his successors, collect no tax for the payment of any of the railroad bonds described, or the interest on the same. The defendants excepted at the time to the several rulings, orders, and decrees, and asked the court to sign this bill of exceptions and decree, which is done Sept. 19, 1863.

FRANCIS SPRINGER, *Judge.*

And afterwards, on the 2d day of October, A. D. 1863, an appeal was filed in this case as follows :

District court, Lee county, Keokuk, Iowa.

H. B. TEN EYCK and OTHERS
vs.
MAYOR OF CITY OF KEOKUK and OTHERS.

To H. B. Ten Eyck and others, pl'ffs, or Rankin & McCrarey, their att'ys, and Chas. Doerr, clerk of said court :

You are hereby notified that defendant has appealed from the judgment of said district court in the above-entitled cause to the supreme court of State of Iowa.

HENRY STRONG, *City Att'y.*

69 We hereby acknowledge service of foregoing notice of appeal, and waive time and agree that this case shall be heard at October term, A. D. 1863, of supreme court at Davenport, Oct. 1st, 1863.

CHARLES DOERR, *Clerk, D. C.,*
By EDM'D MUMM, *Dep'y.*

RANKIN & MCCRAREY, *Att'ys for Pl'ffs.*

STATE OF IOWA, *Lee county :*

I, D. H. Le Seur, clerk of district court, State and county aforesaid, hereby certify that the foregoing is a true transcript of the papers and record entries made in the above-entitled case.

Witness my hand and seal of the court, this 7th day of March, A. D. 1865.

[SEAL.] D. H. LE SEUR, *Clerk.*

[U. S. rev. stamp, 5 ct., cancelled.]

STATE OF IOWA, *County of Lee, ss:*

I, Francis Springer, sole judge of the district court of the
70 first judicial district, (in which is the county of Lee,) hereby certify that D. H. Le Seur, whose genuine signature appears to the foregoing certificate, was at the date thereof, and still is, clerk of the district court within and for the county of Lee, duly elected and qualified; that the seal by him thereto affixed is the seal of said court, and that his attestation is in due form.

In testimony whereof, I hereunto subscribe my name this 4th day of April, 1865.

[SEAL.] FRANCIS SPRINGER, *Judge.*

[5-cent rev. stamp.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 13th day of October, A. D. 1865, came said defendants, by its attorneys, and filed a transcript of a record from the supreme court of Iowa, which said transcript is in the words and figures following, to wit:

71 THE STATE OF IOWA, *ss:*

The State of Iowa to the district court for the county of Lee:

Whereas the supreme court of said State, being lately certified of the record and proceedings in a certain cause which was in the district court for the county of Lee and State aforesaid, wherein H. B. Ten Eyck, plaintiff, and the mayor and city council of Keokuk, defendant, in which said cause judgment was rendered against the said defendants, from which judgment so rendered the said defendants appealed to the said supreme court, and the said court having duly examined the record and proceedings aforesaid in the premises, at the capitol, Des Moines, in said State, on the 9th day of Jan'y, 1863, did affirm the judgment aforesaid, as rendered in the court below:

Therefore you are hereby commanded that with the speed which of right, and according to law, you may, you proceed in the same manner as if no appeal had been taken up and prosecuted in this court, anything in the record or proceedings aforesaid heretofore certified to the contrary notwithstanding.

Witness, Lewis Kinsey, clerk of the supreme court, with the seal of said court hereunto affixed at Des Moines, this 15th day of March, A. D. 1865.

[SEAL.] LEWIS KINSEY,
Clerk of the Supreme Court.

72 In supreme court, Iowa, December term, 1863.

H. B. TEN EYCK
vs.
THE MAYOR AND CITY COUNCIL OF THE CITY of Keokuk, app'l'ts. } Appeal from Lee county.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment and proceedings of the court below, and file their written opinion.

It is therefore considered by the court that the judgment of the court below be affirmed, and that a writ of procedendo issue accordingly, and that the appellee have and recover from the app'l'ts his costs in this behalf laid out and expended at this court, taxed at $7 25, and that execution issue therefor.

A true copy from the records.

[SEAL.] LEWIS KINSEY, *Clerk.*

[U. S. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

73 On this day, to wit, the 13th day of October, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his demurrer in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of relator to the answer and return of respondents.

United States circuit court for the northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* David B. Moses,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, *et al.*, respondents. } Mandamus.

1st. And now comes the relator in the above-entitled proceedings and demurs to the answer and return of respondents to the alternative writ of mandamus, and for cause of demurrer to so much of said answer and return of said parties as is contained in paragraphs or subdivision numbered 2½ says:

Said matters therein set up are insufficient as a defence to relief prayed for, because the respondents are estopped, by the judgment rendered in this court upon said bonds, to deny their validity and constitutionality.

74 2d. And relator further demurring to paragraphs or subdivisions of said answer and return, numbered from 4 to 9, inclusive, taken together, says the matters and things set up therein are both insufficient in law to debar relator of the relief prayed for, and that they disclose facts which entitle him to a peremptory writ herein.

1. It is no sufficient answer that respondents received "city scrip" and "city warrants," instead of money called for, to the amount of $20,000, in satisfaction of said levy and tax pro tanto, because it is admitted said "scrip and warrants" have always been below par, and relator was not a party consenting to receive such "evidence of indebtedness" in payment of his bonds.

2. Because said city received said city scrip and warrants in satisfaction of said levy and tax in her own wrong, and in denegation of rights of relator, nor have said respondents taken up and settled an amount of bonds and coupons equal to amount of costs, scrip, and warrants received and collected for that purpose.

3. Because is no law authorizing said city to issue such scrip or receive same in liquidation of said tax.

4. It is immaterial whether respondents tendered or relator refused scrip and warrants for his bonds. He had a right to demand money; bonds called for money.

75 5. Because the balance of the levy of said tax, to wit, $37,336 16, was in law and fact collected and satisfied by reason of the delinquent lots in Keokuk being "struck off to said city, as provided in the ordinances of said city," and by reason of said "property being so noted and recited upon the books of said city."

6. The printed copy of the ordinances of said city are referred to, admitted as part of the return of respondents for the purpose of the inspection and consideration of the court, and these show said city becomes a purchaser of such "delinquent lots" so "struck off" to her, or at least acquires a new and different lien, (from the levy of the tax,) drawing a different rate of interest, and to be removed or redeemed in a different manner.

7. There is no law or ordinance providing for the resale of such "delinquent lots," or the further enforcement of the original tax.

3d. And for cause of demurrer to the tenth subdivision of the answer of respondent's setting up the proceedings of injunction had against the respondents at the suit of H. B. Ten Eyck *et al.* in the supreme court of Iowa, relator says that same is not sufficient answer in law why the writ prayed for by him should not issue, and thereupon assigns—

76 1. That the judgment in said record contained does not enjoin respondents from paying over and accounting for the "railroad taxes" already received, but only enjoins the future collection of such taxes.

2. For that relator was no party to said injunction proceedings, and the State court of Iowa had not jurisdiction of the necessary parties, the bondholders.

3. Because said decision of the supreme court of Iowa declaring said railroad bonds invalid and unconstitutional, and perpetually enjoining the collection of same, was had long after the execution and sale of same to "innocent purchasers," as appears by the record, and reversed earlier established and settled decisions of the same court, and this court will not in such case follow the State court.

4. Because this court, since the decision of Ten Eyck *et al. v.* City

Council of Keokuk *et al.*, aforesaid, having held said bonds thus enjoined to be valid and constitutional, and given relator judgment upon them, has the right to coerce and enforce the production of the trust funds presumed to be in the hands of respondents to the liquidation of said unsatisfied judgment.

5. Because it is not competent for the State court of Iowa to oust this court of its jurisdiction to enforce its own judgments, and no decree of supreme court of State of Iowa to which relator was not a party is of any valid or binding force to bar relator from using
77 the process of this court to collect his judgment.

6. Because said injunction suit in the State court of Iowa was instituted and said decree obtained by consent and collusion of respondents, and to forestall action for the enforcement of the collection of said railroad bonds in the United States courts.

Whereupon the relator prays the award and issuance of a peremptory writ of mandamus herein.

H. SCOTT HOWELL, *Att'y for Relator.*

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 13th day of October, A. D. 1865, said parties, by their attorneys, filed in said clerk's office their agreement in said entitled cause, which said agreement is in words and figures following, to wit:

U. S. circuit court, Ill., northern district.

U. S., *ex rel.* David B. Moses,
v.
City Council of City of Keokuk, Iowa, *et al.* } Mandamus.

It is hereby agreed by the parties to the abovenamed action that either party may read on evidence in the trial of said action
78 any of the ordinances, city charter amendments thereto, and laws of the State of Iowa contained in a printed volume published by authority of the city council of the city of Keokuk in 1860, entitled "The charter and ordinances of the city of Keokuk, (to August 6, 1860,) together with acts of the general assembly relating to the city, &c.," without further proof or certificate. It is further agreed that the record of proceedings in the case of Ten Eyck and others *v.* City of Keokuk may be read in evidence without being certified by judge of the court.

Sept. 23, 1865.

H. STRONG, *Att'y for City.*
H. SCOTT HOWELL, *Att'y for Relator.*

[U. S. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the seventeenth day of October, in the adjourned October term of said circuit court, A. D. 1865, in the record

1. It is no sufficient answer that respondents received "city scrip" and "city warrants," instead of money called for, to the amount of $20,000, in satisfaction of said levy and tax pro tanto, because it is admitted said "scrip and warrants" have always been below par, and relator was not a party consenting to receive such "evidence of indebtedness" in payment of his bonds.

2. Because said city received said city scrip and warrants in satisfaction of said levy and tax in her own wrong, and in denegation of rights of relator, nor have said respondents taken up and settled an amount of bonds and coupons equal to amount of costs, scrip, and warrants received and collected for that purpose.

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6. The printed copy of the ordinances of said city are referred to, admitted as part of the return of respondents for the purpose of the inspection and consideration of the court, and these show said city becomes a purchaser of such "delinquent lots" so "struck off" to her, or at least acquires a new and different lien, (from the levy of the tax,) drawing a different rate of interest, and to be removed or redeemed in a different manner.

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3d. And for cause of demurrer to the tenth subdivision of the answer of respondent's setting up the proceedings of injunction had against the respondents at the suit of H. B. Ten Eyck *et al.* in the supreme court of Iowa, relator says that same is not sufficient answer in law why the writ prayed for by him should not issue, and thereupon assigns—

1. That the judgment in said record contained does not
76 enjoin respondents from paying over and accounting for the "railroad taxes" already received, but only enjoins the future collection of such taxes.

2. For that relator was no party to said injunction proceedings, and the State court of Iowa had not jurisdiction of the necessary parties, the bondholders.

3. Because said decision of the supreme court of Iowa declaring said railroad bonds invalid and unconstitutional, and perpetually enjoining the collection of same, was had long after the execution and sale of same to "innocent purchasers," as appears by the record, and reversed earlier established and settled decisions of the same court, and this court will not in such case follow the State court.

4. Because this court, since the decision of Ten Eyck *et al.* *v.* City

Council of Keokuk *et al.*, aforesaid, having held said bonds thus enjoined to be valid and constitutional, and given relator judgment upon them, has the right to coerce and enforce the production of the trust funds presumed to be in the hands of respondents to the liquidation of said unsatisfied judgment.

5. Because it is not competent for the State court of Iowa to oust this court of its jurisdiction to enforce its own judgments, and no decree of supreme court of State of Iowa to which relator was not a party is of any valid or binding force to bar relator from using
77 the process of this court to collect his judgment.

6. Because said injunction suit in the State court of Iowa was instituted and said decree obtained by consent and collusion of respondents, and to forestall action for the enforcement of the collection of said railroad bonds in the United States courts.

Whereupon the relator prays the award and issuance of a peremptory writ of mandamus herein.

H. SCOTT HOWELL, *Att'y for Relator.*

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U. S. circuit court, Ill., northern district.

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It is hereby agreed by the parties to the abovenamed action that either party may read on evidence in the trial of said action
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Sept. 23, 1865.

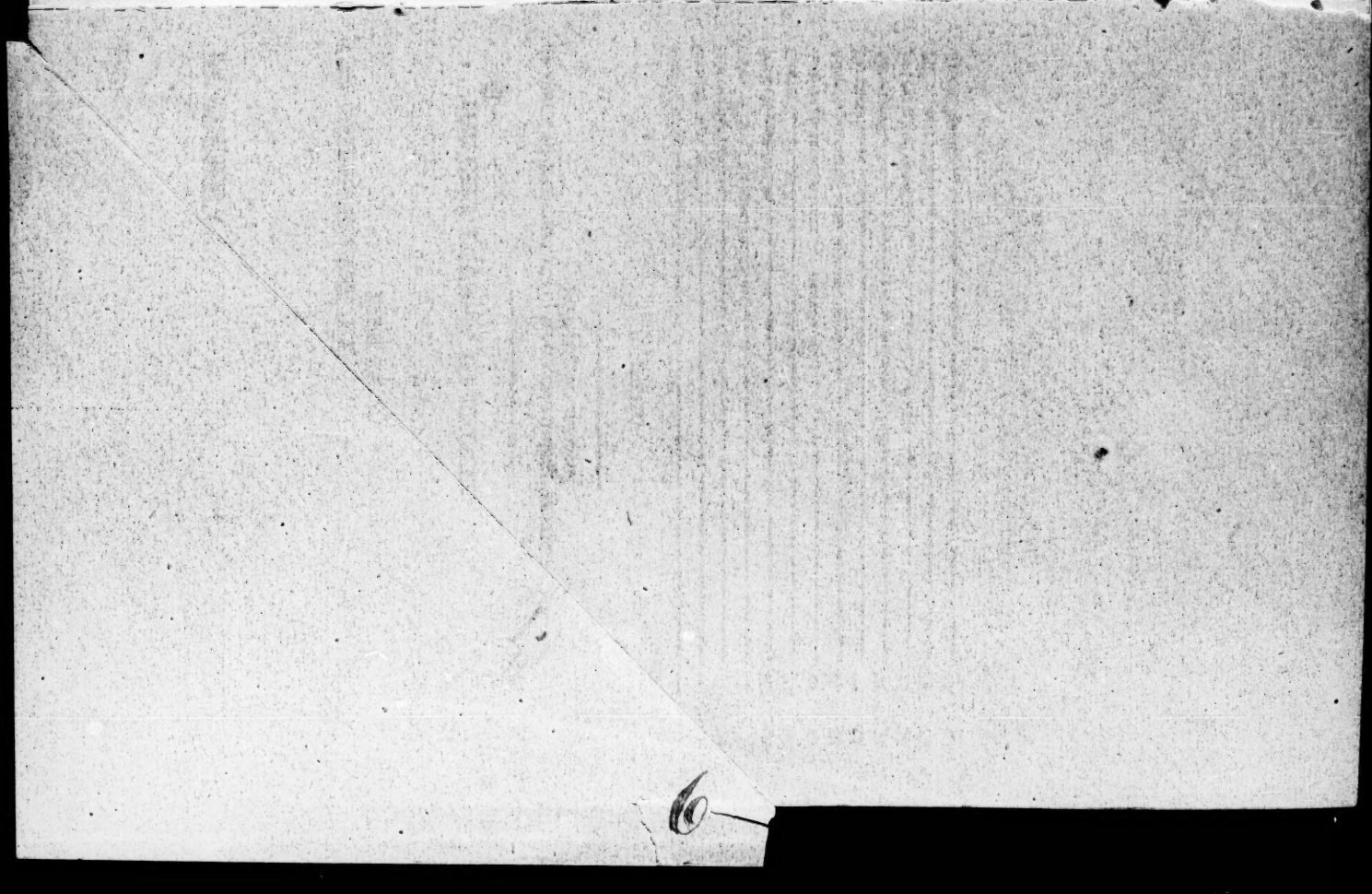
H. STRONG, *Att'y for City.*
H. SCOTT HOWELL, *Att'y for Relator.*

[U. S. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the seventeenth day of October, in the adjourned October term of said circuit court, A. D. 1865, in the record



SUPREME COURT OF THE UNITED STATES.

No. 358.

THE UNITED STATES, EX REL. DAVID B. MOSES, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF KEOKUK, IOWA, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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a *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the proceedings and record, as also in the rendition of judgment in the circuit court of the United States for the northern district of Illinois, before you, between the United States at the relation of David B. Moses, and against the city council of the city of Keokuk, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, Iowa, and the clerk of the city council of the city of Keokuk, Iowa, respondents, a manifest error hath happened, to the great damage of the said David B. Moses, relator, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and that full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, and all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, D. C., on the fourth day of December next, in the said Supreme Court,
b to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] WM. H. BRADLEY, *Clerk.*

c *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the city council of the city of Keokuk, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, Iowa, the clerk of the city council of the city of Keokuk, Iowa, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday of December next, 1865, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the United States, at the relation of David B. Moses, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thos. Drummond, one of the justices of the

said Supreme Court of the United States, this 28th day of November in the year of our Lord, 1865.

THOMAS DRUMMOND, *U. S. Judge.*

d Keokuk, Iowa, December 1st, rec'd a copy of this citation, and due and legal service of this writ on respondents is hereby acknowledged.

H. STRING, *Att'y for Def'ts.*

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, district judge of said district, associate judges of said circuit court, on Tuesday, the seventeenth day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth year.

WM. H. BRADLEY, *Clerk.*

Petition for mandamus.

THE UNITED STATES OF AMERICA, at the relation of David B. Moses,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, the Mayor of the City of Keokuk, Iowa, the Treasurer of the City of Keokuk, Iowa, and the Clerk of the City Council of the City of Keokuk, Iowa.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that on the sixteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, the United States of America, at the relation of David B. Moses, by Woodbridge & Grant and H. Scott Howell, attorneys, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, on information for a writ of mandamus against the city council of the city of Keokuk, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, Iowa, and the clerk of the city council of the city of Keokuk, Iowa, defendants, which said information is in the words and figures following, to wit:

3 *Information.*

Circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* David B. Moses,
v.
CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, *et al.*, def'ts.
} Mandamus.

And now comes the United States of America, at the relation of Da-

vid B. Moses, and says said David B. Moses is a citizen of the State of New York, residing in the city of New York; that the city of Keokuk, Iowa, is a municipal corporation in and existing under the laws of the State of Iowa; that in order to enable said city to issue her certain corporate bonds hereinafter named the general assembly of the State of Iowa passed a law 29 January, 1857, entitled "An act to authorize the city of Keokuk to levy a direct tax, not exceeding one hundred and fifty thousand dollars, for the benefit of the Keokuk, Fort Des Moines, and Minnesota Railroad Company," which is in words and figures following, to wit:

SECTION 1ST. *Be it enacted by the general assembly of the State of Iowa*, That the mayor or mayor pro tem. of the city of Keokuk is
4 hereby authorized (and if requested by the city council, he shall be bound) to order an election of the legal voters of said city, at which shall be submitted the following proposition, viz: "Will the city of Keokuk levy a direct tax of one hundred and fifty thousand dollars for the benefit of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, (or less, as the company may request,) principal and interest on same sum at rate of not to exceed ten per cent. interest per annum, to be collected one-third (and interest on whole sum ordered) in one year,) in one year, one-third (and interest on two-thirds) in two years, and one-third (and interest on same) in three years from the date of the issue of bonds to be issued in pursuance of the provisions of this act. The votes shall be printed respectively 'for the levy of the tax,' and 'against the levy of the tax.'"

SEC. 2. In case the majority of the votes cast at said election shall be in favor of the tax, then the mayor or mayor pro tem. of said city shall be, and is hereby, authorized to issue the bonds of said city of Keokuk for the amount so voted, payable one-third in one year, one-third in two years, and one-third in three years, with interest coupons, payable annually, at the rate of not over ten per cent. per annum.

SEC. 3. Said railroad company shall be bound to issue to each in-
individual for the amount of tax he or she may have paid in
5 pursuance of the provision of this act, either certificate of stock of said company or *or* scrip for stock in same, which scrip when presented in sums of over fifties of dollars shall be redeemed by issue of certificate of stock of said company.

SEC. 4. The amount of the tax and interest shall be a lien on the taxable property of said city, and shall be collected in time to meet the said bonds and interest, and shall be held by the said city, separate and apart from other funds, as a special fund sacred for the liquidation of said bonds and interest thereon.

SEC. 4. This act shall take effect from and after its publication in the Gate City and Times newspaper of said city without cost to the State.

I certify that the foregoing was published in the Gate City and Daily Evening Times, March 5th, 1857.

ELIJAH SELLS, *Secretary of State.*

6 That afterwards, to wit, the 28th April, 1857, the city council of said city passed an ordinance directing, and by virtue of a vote of the people of said city empowering, the mayor of said city to issue his certain corporate bonds hereafter stated, which ordinance is entitled, "An ordinance providing for the issue of bonds to the Keokuk, Fort Des Moines, and Minnesota Railroad Company," which is in words and figures following to wit :

Whereas, in accordance with an act of the general assembly of the State of Iowa, entitled "An act to authorize the city of Keokuk to levy a direct tax of not to exceed one hundred and fifty thousand dollars for the benefit of the Keokuk, F't Des Moines, and Minnesota Railroad Company," approved January 9, 1857, the mayor of said city did order an election by the legal voters of said city, submitting the following proposition, to wit, "Will the city of Keokuk levy a direct tax of one hundred and fifty thousand dollars for the benefit of the Keokuk, F't Des Moines, and Minnesota Railroad Company; principal and interest on the same sum at the rate of not to exceed ten per cent. per annum, to be collected one-third (and interest on the whole sum ordered) in one year, one-third (and interest on two-thirds) in two years, and one-third (and interest on same) for
7 three years from date of issue of the bonds to be issued in pursuance with the provisions of said act;" and whereas said proposition was voted upon on the 23d day of April, 1857, and whereas said proposition was carried by an almost unanimous vote, there being only 14 votes cast against it: Therefore—

SEC. 1. *Be it ordained by the city council of the city of Keokuk*, That the mayor of the city of Keokuk is hereby authorized and directed to issue to the Keokuk, F't Des Moines, and Minnesota Railroad Company one hundred and fifty bonds of the city of Keokuk, of one thousand dollars each, dated May 1st, 1857, and drawing ten per cent. interest per annum, with interest coupons attached from date, payable annually at the office of Duncan, Sherman & Co., in the city of New York, and the principal payable at the same place; fifty of them payable in one year from date, fifty in two years from date, and fifty in three years from date.

SEC. 2. *And be it further ordained*, That a special, *that a special* direct tax be, and the same is hereby, levied upon all the taxable property of the city of Keokuk, of sixty-five thousand dollars for the year 1857, and sixty thousand dollars for the year 1858, and fifty-five thou-
8 sand for the year 1859, the said tax to be collected in the same manner that other taxes are collected, except that the city council may extend the time of collection, so that said tax levied for the year 1857 shall be all collected against the 1st day of April, 1858, and the tax levied for the year 1858 against the 1st day of April, 1859, and the tax levied for the year 1859 against the year 1860, and that the tax so levied and collected shall be set apart separate from other taxes, and sacredly held and applied by the city treasury for the payment of said bonds, interest and coupons, as same become due; that the collector of said tax shall give each tax payer, or his agent, or legal representative, on receipt of the tax, a receipt for the amount,

and certifying that it will be paid by the Keokuk, F't des Moines, and Minnesota Railroad Company, or when presented in sums of even hundreds of dollars will be paid in certificates of said company at par, and that said scrip, when presented in sums of even hundreds of dollars, will be redeemed in the same manner by the issue of certificates of stock of said company, at par. Passed April 28, 1857.

HAWKINS TAYLOR, *Mayor.*

Attest: B. S. MERRIAN, *Clerk.*

9 That afterwards, to wit, on or about the 1st May, 1857, in pursuance and by order of the said act and ordinance aforesaid, the said city, under her corporate seal and by the hands of her mayor, did execute, issue, and deliver to said Keokuk, Fort des Moines, and Minnesota Railroad Company her certain fifty bonds of said date (1st May, 1857) for the sum of one thousand dollars each, payable, with ten per cent. interest, in one year from date to said railroad company or bearers, and the like sum of similar bonds to same parties due in two years after date, and the like sum of similar bonds to same parties due in three years after date.

That relator became the holder and owner of twenty-five of said bonds due in one year (before the maturity thereof, and in the ordinary course of business and for value received.)

That said bonds thus held by him, and interest due thereon, have not been paid or any part thereof.

That he brought suit thereon in the circuit court of the United States for the district of Iowa against the city of Keokuk, which action was transferred on order of judge of said court pendente like to the circuit court of the United States for the northern district of Ill.,

(because said judges were pecuniarily interested in matters

10 involved therein,) and that on or about the 19th October, 1864 he recovered a judgment in this court against said city of Keokuk for the sum of thirty-six thousand five hundred forty-nine $\frac{00}{100}$ dollars damages and costs. Which judgment remains unreversed and unpaid.

That during the year 1857 the city council of said city of Keokuk, Iowa, by virtue of said act and ordinance, did levy a direct tax of forty-five cents on the one hundred dollars of the valuation of taxable property within the corporate limits of said city, to pay the principal and interest of said fifty thousand dollars of said bonds maturing in one year, and also the annual interest on the one hundred thousand dollars of similar bonds maturing in one and two years, which levy and assessment amounted to $67,318 98

That of this levy the sum of 1,411 82

was deducted for the conviction of error in assessments

65,907 16

That of the balance the sum of $28,071, or twenty-eight thousand and seventy one dollars, has been paid into the city treasury.

And that the balance of said tax, ($37,836 16,) to wit, thirty-seven

thousand eight hundred and thirty-six dollars and sixteen cents has been received, settled, and satisfied by the said city, by reason of
11 said city having become the purchaser of a large amount of real estate in said city, at a delinquent tax sale, had for the non-payment of said direct tax levied as aforesaid upon the said lots and parcels of real estate bo't in by said city.

That by reason of the payment of said money (in part) to the treasurer, and the purchase by said city of said real estate, the levy of said tax aforesaid has been fully paid to said city and satisfied.

That said act and ordinance provides "said tax should be set apart separate from other taxes, and sacredly held and applied by by the city treasurer for the payment of said bonds and interest coupons as they become due."

That, notwithstanding this, said city has only taken up and paid off seventeen of said bonds due in one year, ($17,000,) and has failed and refused to pay the twenty-five of said bonds of said relator, or his judgment had in this court thereon.

That the said city has a large amount of money in her treasury at this time, but the exact amount is unknown to the relator.

12 That the relator has made a demand personally upon the city council of the city of Keokuk, composed of the mayor and aldermen of said city, while in session in their council chamber in said city, on the 1st day of May, 1865, at a regular meeting of said council, to pay said bonds and judgment, but that said city council treated said demand frivolously, and failed and refused to make an appropriation therefor, or to pay any part thereof.

That the city treasurer is the legal custodian of all funds belonging to said city, that he is only required to pay same out upon an appropriation made by resolution of the city council and the receipt of the warrant of the mayor of said city, countersigned by the clerk of said city council.

That said city has no other property which can be reached on execution to satisfy said judgment, and that relator is remediless and impotent to collect his judgments from defendants therein, save and except through the exercise of the power of this court to award him a writ of mandamus to compel the payment of same from the money now or hereafter being in the city treasury or under her control.

That the judges of the circuit court of the United States for the district of Iowa are still incapacitated from hearing this appli-
13 cation, because of their same direct pecuniary interest in the matters involved therein.

That the city council of said city had regular meetings on the first and third Mondays of each and every month in the year.

That the clerk of the city council of the city of Keokuk, Iowa, and treasurer of the city of Keokuk, Iowa, are officers not elected by the votes of the people, but receive their appointment from, give bonds to, and can be removed from their offices by the city council of the city of Keokuk, Iowa:

Now, therefore, relator prays the court for a writ of mandamus to command the city council of the city of Keokuk to pay and cause to

be paid, from funds now or hereafter being in her treasury or under their control, to relator, sufficient to satisfy the judgment of David B. Moses, relator, had in the circuit court of the United States for the northern district of Illinois, against the city of Keokuk, Iowa, on or about the 19th October, 1864, being for the sum of thirty-six thousand five hundred forty-nine and $\frac{00}{100}$ dollars, and 6 per cent. interest from said date, and costs, being $100 78; that said city council make an appropriation to pay said judgment, interest, and costs; that thereupon the mayor be required to issue a warrant upon the city treasurer therefor; that the city clerk thereupon be required to
14 countersign said warrant; and that thereupon the city treasurer be required and commanded to pay said warrants in full, if he has sufficient funds, or if not, then to pay as fast as he may be able, from any funds to come into his hands belonging to said city, or that they show cause, if any they can, at the return day of said writ, why said acts should not be done; and that said writ be made returnable on the day, being first Monday of the next term of this court for further hearing and order.

WOODBRIDGE & GRANT and H. SCOTT HOWELL,
Att'ys for Relator.

UNITED STATES OF AMERICA, *State of Iowa, Lee county, ss:*

Personally appeared before me, clerk of the district court of the United States for the district of Iowa, H. Scott Howell, who, being by me first duly sworn, states he is one of the att'ys of David B. Moses, relator, that he, affiant, has personal knowledge of the chief matters stated in the above petition, and that the allegations thereof are true, as he verily believes.

H. SCOTT HOWELL.

Sworn to and subscribed before me by said Howell on the 4 May, 1865, as witness my hand and seal of said court attached

JOHN C. BURNS, *Clerk*,
By ERIE J. LEECH, *Deputy*.

Clerk's fee 50 c'ts, paid by pl'ff's att'y.

Indorsed: filed May 16, 1865.

WM. H. BRADLEY, *Cl'k*.

15 On the same day, to wit, the 16th day of May, in the adjourned May term, A. D. 1865, of said court, in the record of the proceedings thereof in said-entitled cause, is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of David B. Moses,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa; the Mayor of the city of Keokuk, Iowa; the Treasurer of the city of Keokuk, Iowa, and the Clerk of the city council of the city of Keokuk, Iowa. } Petition for mandmus.

And information under oath having been this day filed in this court

by the United States of America, at the relation of David B. Moses, against the said city council of the city of Keokuk, Iowa, *et al.*, now comes the said relator, by his attorney, and on his motion it is ordered by the court that an alternative writ of mandamus issue under the seal of this court, as prayed for in said information, returnable on the first Monday of July next.

On this day, to wit, the 19th day of May, A. D. 1865, an alternative writ of mandamus issued, as follows:

16 *Mandamus writ.*

Circuit court of the United States, northern district of Illinois.

The United States of America to the city council of Keokuk, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, and the clerk of the city council of the city of Keokuk, Iowa, greeting:

Whereas the United States of America, at the relation of one David B. Moses, has filed in the circuit court of the United States for the northern district of Illinois, an information under oath representing the facts and containing the prayer for a writ of mandamus, as follows, to wit:

"That said relator, David B. Moses, is a citizen of the State of New York, residing in the city of New York; that the city of Keokuk, Iowa, is a municipal corporation in and existing under the laws of the State of Iowa; that in order to enable said city issue her certain corporate bonds hereinafter named, the general assembly of the State of Iowa passed a law, 29 January, 1857, entitled an act
17 to authorize the city of Keokuk to levy a direct tax not exceeding one hundred and fifty thousand dollars for the benefit of the Keokuk, Fort Des Moines and Minnesota Railroad Company, which is in words and figures following, to wit:

"SECTION 1st. *Be it enacted by the general assembly of the State of Iowa*, That the mayor or mayor pro tem. of the city of Keokuk is hereby authorized, and if requested by the city council he shall be bound, to order an election of the legal voters of said city, at which shall be submitted the following proposition, viz: Will the city of Keokuk levy a direct tax of one hundred and fifty thousand dollars for the benefit of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, (or less as the company may request,) principal and interest on same sum at rate of not to exceed ten per cent. interest per annum, to be collected one third (and interest on whole sum ordered) in one year, one-third (and interest in two-thirds) in two years, and one-third (and interest on same) in three years, from the date of the issue of bonds to be issued in pursuance of the provisions of this act. The votes shall be printed respectively, 'for the levy of the tax' and 'against the levy of the tax.'

18 "SEC. 2. In case the majority of the votes cast at said election shall be in favor of the tax, then the mayor or mayor

pro tem. of said city shall be and is hereby authorized to issue the bonds of said city of Keokuk for the amount so voted, payable one-third in one year, one-third in two years, and one-third in three years, with interest coupons payable annually at the rate of not over ten per cent. per annum.

"SEC. 3. Said railroad company shall be bound to issue to each individual, for the amount of tax he or she may have paid in pursuance of the provision of this act, either certificates of stock of said company, or *or* scrip for stock in same, which scrip, when presented in sums of over fifties of dollars, shall be redeemed by issue of certificates of stock of said company.

"SEC. 4. The amount of tax and interest shall be a lien on the taxable property of said city, and shall be collected in time to meet the said bonds and interest, and shall be held by the said city separate and apart from other funds as a special fund saved for the liquidation of said bonds and interest thereon.

"SEC. 5. This act shall take effect from and after its pub-
19 lication in the Gate City and Times newspaper of said city, without cost to the State.

"I certify that the foregoing was published in the Gate City and Daily Evening Times, March 5th, 1857.

"ELIJAH SELLS, *Secretary of State.*

"That afterwards, to wit, the 28 April, 1857, the city council of said city passed an ordinance directing, and by virtue of a vote of the people of said city empowering, the mayor of said city to issue her certain corporate bonds hereinafter stated, which ordinance is entitled 'An ordinance providing for the issuing of bonds to the Keokuk, Fort Des Moines, and Minnesota Railroad Company,' which is in the words and figures following, to wit:

"Whereas, in accordance with an act of the general assembly of the State of Iowa, entitled 'An act to authorize the city of Keokuk to levy a direct tax, not to exceed one hundred and fifty thousand dollars, for the benefit of the Keokuk, F't Des Moines and Minnesota Railroad Company,' approved January 9, 1857, the mayor of said city did order an election by the legal voters of said city submitting the following proposition, to wit, 'Will the city of Keokuk levy a direct tax of one hundred and fifty thousand dollars for the
20 benefit of the Keokuk, F't Des Moines, and Minnesota Railroad Company, principal and interest on the same sum at the rate of not to exceed ten per cent. per annum, to be collected one-third (and interest on the whole sum ordered) in one year, one-third (and interest on two-thirds) in two years, and one-third (and interest on same) in three years from date of issue of the bonds, to be issued in pursuance with the provisions of said act; and whereas said proposition was voted upon on the 23d day of April, 1857, and whereas said proposition was carried by an almost unanimous vote, there being only 14 votes cast against it: Therefore—

"SEC. 1. *Be it ordained by the city council of the city of Keokuk,* That the mayor of the city of Keokuk is hereby authorized and di-

rected to issue to the Keokuk, F't Des Moines and Minnesota Railroad Company, one hundred and fifty bonds of the city of Keokuk, of one thousand dollars each, dated May 1st, 1857, and drawing ten per cent. interest per annum, with interest coupons attached from date, payable annually at the office of Duncan, Sherman & Co., in the city of New York, and the principal payable at the same place, fifty of these payable in one year from date, fifty in two years
21 from date, and fifty in three years from date.

"SEC. 2. *And be it further ordained*, That a special direct tax be and the same is hereby levied upon all the taxable property in the city of Keokuk, of sixty-five thousand dollars for the year 1857, and sixty thousand dollars for the year 1858, and of fifty-five thousand for the year 1859; the said tax to be collected in the same manner that other taxes are collected, except the city council may extend the time of collection so that said tax levied for the year 1847, shall be all collected against the 1st day of April, 1858, and the tax levied for the year 1858 against the first day of April, 1859, and the tax levied for the year 1859 against the year 1860, and that the tax so levied and collected shall be set apart separate from other taxes, and sacredly held and applied by the city treasury for the payment of said bonds, interest and coupons, as the same become due; that the collector of said tax shall give each tax-payer, or his agent or legal representative, on receipt of the tax, a receipt for the amount, and certifying that it will be paid by the Keokuk, F't Des Moines, and Minnesota Railroad Company, or when presented in sums of even hundreds of
22 dollars will be paid in certificates of said company at par, and that said scrip, when presented in sums of even hundreds of dollars, will be redeemed in the same *in the same* manner by the issue of the certificates of stocks of said company at par.

"Passed April 28, 1857.

"HANKINS TAYLOR, *Mayor.*

"Attest: "B. S. MERRIAM, *Clerk.*

"That afterwards, to wit, on or about the 1st May, 1857, in pursuance and by virtue of the said city, under her corporate seal, and by the hands of her mayor, did execute, issue, and deliver to said Keokuk, Fort Des Moines, and Minnesota Railroad Company, her certain fifty bonds of said date (1st May, 1857) for the sum of one thousand dollars each, payable, with ten per cent. interest, in one year from date, to said railroad company or bearers, and the like sum of similar bonds to same parties, due in two years after date, and the like sum of similar bonds to same parties, due in three years after date.

"That relator became the holder and owner of twenty-five of said bonds, due in one year, before the maturity thereof, and in the ordinary course of business, and for value received; that said
23 bonds thus held by him, and interest due thereon, have not been paid, or any part thereof; that he brought suit thereon in the circuit court of the United States for the district of Iowa against the city of Keokuk, which action was transferred on order of judges of said court, pendente lite, by the circuit court of the United

States for the northern district of Ill., because said judges were pecuniarily interested in matters involved therein; and that on or about the 19 October, 1864, he recovered a judgment in this court against said city of Keokuk, for the sum of thirty-six thousand five hundred forty-nine dollars—damages and costs $100 75—which judgment remains unreversed and unpaid. That during the year 1857 the city council of said city of Keokuk, Iowa, by virtue of said act and ordinance, did levy a direct tax of forty-five cents on the one hundred dollars of the valuation of taxable property within the corporate limits of said city to pay the principal and interest of said fifty thousand dollars of said bonds, maturing in one year, and also the annual interest on the one hundred thousand dollars of similar bonds maturing in one and two years, which levy assessment amounted to $67,318 98
That of this levy the sum of 1,411 82

was deducted for the correction of errors in the assessment.

65,407 16

24 "That of the balance the sum of $28,071 (twenty-eight thousand and seventy-one dollars) has been paid into the city treasury, and that the balance of said tax, $37,836 16, to wit, thirty-seven thousand eight hundred thirty six and $\frac{16}{100}$ dollars, has been received, settled, and satisfied by the said city, by reason of said city having become the purchaser of a large amount of real estate in said city, at a delinquent tax sale, had for the non-payment of said direct tax, levied as aforesaid, upon the said lots and parcels of real estate bo't in by said city.

"That by reason of the payment of said money (in part) to the treasurer, and that the purchase, by said city, of said real estate, the levy of said tax, aforesaid, has been fully paid to said city and satisfied.

"That said act and ordinance provides said tax should be set apart separate from other taxes, and sacredly held and applied by the city treasurer for the payment of said bonds and interest coupons as they become due.

"That, notwithstanding this, said city has only taken up and paid off seventeen of said bonds due in one year, ($17,000,) and has failed and refused to pay the twenty-five of said bonds of said relator, or his judgment had in this court thereon. That the
25 said city has a large amount of money in her treasury at this time, but the exact amount is unknown to the relator. That the relator has made a demand, personally, upon the city council of the city of Keokuk, composed of the mayor and aldermen of said city, while in session in their council chamber, in said city, on the 1st day of May, 1865, at a regular meeting of said council, to pay said bonds and judgment; but that said city council treated said demand frivolously, and failed and refused to make an appropriation therefor, or to pay any part thereof.

"That the city treasurer is the legal custodian of all funds belonging to said city, that he is only required to pay same out upon an appropriation made by resolution of the city council and the receipt of the warrant of the mayor of said city, countersigned by the clerk of said city council.

"That said city has no other property which can be reached, on execution, to satisfy said judgment, and that relator is remediless and impotent to collect his judgments from the defendants therein, save and except through the exercise of the power of this court to award him a writ of mandamus to compel the payment of same from the money now or hereafter being in the city treasury, or under her control.

26 "That the judges of the circuit court of the United States for the district of Iowa are still incapacitated from hearing this application, because of their same direct pecuniary interest in the matters involved therein.

"That the city council of said city hold regular meetings on the first and third Mondays of each and every month in the year.

"That the clerk of the city council of the city of Keokuk, Iowa, and treasurer of the city of Keokuk, Iowa, are officers not elected by the votes of the people, but receive their appointment from, give bonds to, and can be removed from their offices by the city council of the city of Keokuk, Iowa.

"Now, therefore, relator prays this court for a writ of mandamus to command the city council of the city of Keokuk to pay and cause to be paid, from funds now or hereafter being in her treasury or under their control, to relator, sufficient to satisfy the judgment of David B. Moses, relator, had in the circuit court of the United States for the northern district of Illinois, against the city of Keokuk, Iowa, on or about the 19th October, 1864, being for the sum of thirty-six thou-
sand five hundred and forty-nine $\frac{0}{100}$ dollars, and 6 per cent. in-
27 terest from said date, and costs being $100 75; that said city council make an appropriation to pay said judgment, interest, and coupons. That thereupon the mayor be required to issue a warrant upon the city treasurer therefor; that the city clerk thereupon be required to countersign said warrant, and that thereupon the city treasurer be required and commanded to pay said warrant in full, if he has sufficient funds, or if not, then to pay as fast as he may be able, from any funds to come into his hands belonging to said city, or that they show cause, if any they can, at the return day of said writ, why said acts should not be done, and that said writ be made returnable on the day, being first Monday of the next term of this court, for further hearing and orders.

"WOODBRIDGE & GRANT, and
"H. SCOTT HOWELL, *Att'ys for Relator.*

"UNITED STATES OF AMERICA, *State of Iowa, Lee county, ss:*

"Personally appeared before me, clerk of the district court of the United States for the district of Iowa, H. Scott Howell, who, being

by me first duly sworn, states he is one of the att'ys of David B.
28 Moses, relator, that he, affiant, has personal knowledge of the chief matters stated in the above petition, and that the allegations thereof are true, as he verily believes.

"H. SCOTT HOWELL.

"Sworn to and subscribed before me by said Howell on the 4th May, 1865, as witness my hand and seal of said court attached.

[SEAL.] "JOHN C. BURNS, *Clerk.*

"By ERIE J. LEECH, *Deputy.*

[Rev. stamp cancelled.]

"Indorsed: Filed May 16th, 1865.

"WM. H. BRADLEY, *Clk.*"

And on the same day, to wit, the 16th day of May, A. D. 1865, being of the May term of said court, A. D. 1865, in the record of the proceedings of said court in said entitled cause, upon filing the foregoing information, is the following order, to wit:

"THE UNITED STATES OF AMERICA, at the relation of David B. Moses,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of
29 Keokuk, Iowa, and the clerk of the city council of the city of Keokuk, Iowa. } Petition for mandamus.

"An information under oath having been this day filed in this court by the United States of America, at the relation of David B. Moses, against the said city council of the city of Keokuk, Iowa, *et al.*, now comes the said relator, by his attorney, and on his motion it is ordered by the court that an alternative writ of mandamus issue under the seal of this court, as prayed for in said information, returnable on the first Monday of July next."

Now, therefore, these presents are to command you, the city council of the city of Keokuk, Iowa, that at your first regular meeting after the service of this writ upon you, you make an appropriation for, and that you cause to be paid to relator, from the funds now or hereafter being in the city treasury of said city, the said certain judgment had and obtained in the circuit court of the United States for the northern district of Illinois, on or about the 19 October, 1864, by David B. Moses, against the city of Keokuk, for the sum of thirty-six thousand five hundred and forty-nine $\frac{00}{100}$ dollars, and six per cent. interest from said date, and $100 70 costs
30 upon twenty-five "city of Keokuk ten per cent. special tax railroad bonds," dated 1st May, 1857, and payable one year after date, to the Keokuk, Fort Des Moines, and Minnesota Railroad Company, or bearers; that you, the mayor of the said city of Keokuk, Iowa, thereupon issue a warrant upon the treasurer of the said

city of Keokuk, Iowa, for said sum thus appropriated by said city council to pay the judgment had by said David B. Moses against the city of Keokuk, Iowa, in the circuit court of the United States for the northern district of Illinois; that thereupon you, the clerk of the city council of the city of Keokuk, Iowa, countersign the warrant to be issued by the mayor of the city of Keokuk, Iowa, to pay the judgment had and obtained by David B. Moses against the city of Keokuk, Iowa, in the circuit court of the United States for the northern district of Illinois; that thereupon you, the treasurer of the city of Keokuk, Iowa, pay, so far as you can, said warrant to be issued by the mayor of the city of Keokuk, Iowa, and to be countersigned by the clerk of the city council of the city of Keokuk, Iowa, to satisfy the judgment of David B. Moses against the city of Keokuk, Iowa, had and obtained in the circuit court of the United States for the north-
31 ern district of Illinois, from any funds of said city, in or to come into your hands or under your control.

Or that you, the parties aforesaid, respectively show cause, if any you can, by the return day of this writ, why said acts severally required of you herein should not be done, and of this writ, and in what manner this our command shall be executed by you, you are required to make due return to the justices of this court on the first Monday of July next, and hereof fail not, at your peril.

To the United States marshal for the district of Iowa to execute.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago, said district, this nineteenth day of May, A. D. 1865, and of our independence the 89th.

[SEAL.] WM. H. BRADLEY, *Clk.*

[5 cts. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clk.*

32 On this day, to wit, the 13th day of October, A. D. 1865, came said defendants by their attorneys, and filed in said clerk's office their answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of def'ts.

United States circuit court for the northern district of Illinois.

UNITED STATES OF AMERICA, on the relation of David B. Moses, *vs.* THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, the mayor of the city of Keokuk, the treasurer of the city of Keokuk, the clerk of the city council of the city of Keokuk, defendants.	Mandamus.

Now come the city council of the city of Keokuk, Iowa, the mayor of the said city of Keokuk, and the treasurer of said city, and the

clerk of the city council of said city, by H. Strong, their attorney, and for answer to the alternative writ of mandamus heretofore granted in this cause, state and show why they have not done as in
33 said writ commanded.

1. They admit that the said relator, David B. Moses, is a citizen of the State of New York, and that the said city of Keokuk is a municipal corporation existing under the laws of Iowa, in said State.

2. They admit that *that* the general assembly of the State of Iowa and the city council of the said city passed and enacted the laws and ordinances set forth in the information filed by the relator, and that said city issued the said bonds, on which they admit said judgment has been obtained in this court.

2½. But these defendants aver that these acts of the general assembly were and are unconstitutional under the constitution of said State, and that the ordinances of said city of Keokuk, and the said bonds issued in pursuance thereof, were wholly unconstitutional, illegal, and void, and of no force and effect, and have been repeatedly so declared by the supreme court of the said State of Iowa, and the said acts and ordinances conferred no authority upon the said city to execute and issue the said bonds and coupons, and the said city had no legal authority or right to issue the said bonds and coupons.

3. Def'ts admit that in the year A. D. 1857 the city council did levy a special tax of $65,407 $\frac{16}{100}$ *dollars*, sufficient and for the payment of said fifty (one year) bonds and the interest thereon, and the interest for said year upon the 20 3-years bonds of same issue,
34 and admit that the said one-year bonds are the same bonds upon 25 of which and the interest coupons a relator afterwards recovered his said judgment.

4. Def'ts deny that of the said tax so levied twenty-eight thousand and seventy-one dollars was paid to the city or collected by the city. Def'ts allege and show that only about eight thousand dollars, and no more, of said tax so levied were ever paid to the city in cash, or collected by said city; and the whole of the money collected on said tax was applied and paid by said city upon the said $50,000 in bonds maturing in one year from date, and that a large amount more of money in addition, to wit, over twelve thousand dollars, was applied and paid by the said city upon the said bonds, and that seventeen of the said one year bonds, with the interest coupons thereon, amounting in the aggregate to the sum of about $20,000, were wholly paid by the city and cancelled.

5. Def'ts state that ($20,000) twenty thousand dollars of the said tax of $65,407 16, levied as aforesaid by the city council for the payment of said $50,000, in one-year bonds, with the interest on the same, and on the $50,000 each of two and three year bonds, was received during the year A. D. 1857, and prior to April 1st. 1858, by the collector of the said city in outstanding warrants and city scrip, being obligations to pay money before issued by the said city, and
35 the said collector did receive $20,000 dollars of said outstanding obligations of the said city in the form of city scrip and warrants, so called, issued by said city, and did thereupon receipt for

twenty thousand dollars of said tax, levied as aforesaid, to the several tax payers, who delivered to him the said scrip and warrants, and in no other way did the said collector, nor the said city, ever receive any portion of said $20,000, and have never received any of the said levy of $65,407 16 tax, except the said sum of eight thousand cash and $20,000 scrip and warrants, in manner aforesaid.

6. Def'ts deny that the sum of 28,071 dollars of said tax has ever been paid into the city treasury, except as above stated, and def'ts further state that in the year A. D. 1858 they offered and tendered to the relator the said city scrip to the amount of 20,000 dollars, which was then and is now below par, and also when received by the collector as aforesaid, which has been received as aforesaid by the collector of said city, and upon the receipt of which said collector receipted for $20,000 of said special tax, and defendants have ever been ready, able, and willing to deliver to said Moses $20,000 in said obligations of said city, in payment of an equal amount of said bonds held by him up to the time they were enjoined from paying said bonds, as hereinafter set forth.

36 7. Def'ts deny that the balance of said tax, to wit, 37,836 $\frac{16}{100}$ dollars, or any part thereof, has been received, settled, and satisfied by said city by reason of said city having become the purchaser of a large amount of real estate in said city, at a delinquent tax sale had for the non-payment of said direct tax, levied as aforesaid upon real estate in said city, or bought in by said city, save as hereinafter stated.

8. Def'ts deny that said city has ever become the purchaser of any real estate at any tax sale or for the non-payment of said tax levied as aforesaid, and further answering def'ts deny that said city has ever bought in any real estate or other property under said tax sale; and def'ts state and allege there was a tax sale advertised in March, A. D. 1858, for delinquent taxes, levied as aforesaid by the city in the year 1857 for the payment of the said bonds, that the amount of said special tax delinquent was about $37,386 16 dollars, as above stated. That there were no bidders for any of the property offered at said tax sale, which was the only time any property was ever offered for sale under said delinquent special tax; that by reason of there being no bidders at said sale, said property was noted and recited upon the tax books of said city, as provided in the ordinances of said

37 city of Keokuk, the printed copy of which is referred to, and omitted as struck off to the city, but neither the said city nor any person for said city did buy, purchase, bid off, or become the owner of any property of said tax sale, so called, or for said delinquent tax, nor could the said city under her charter buy or purchase any property for said delinquent tax, nor does she now hold or own any of such property, and the most of said delinquent tax is still wholly unpaid and uncollected, and remains delinquent.

Def'ts, on the contrary, aver that said [37,336 16-100] dollars of special tax has never been paid by any sale of property to the city at tax sale, except as noted as struck of to city as aforesaid, and most of the same is still a lien upon all of the same property upon which

it was originally levied, and is wholly uncollected by the said city or by the collector of said city, save as noted upon the records as struck off to the city for want of bidders as aforesaid, and the collector of said city has never been able to collect the same. And def'ts are wholly unable to pay the same over to relator until the same shall have been collected and paid into the treasury of said city, and def'ts are forever enjoined by the district court of Lee county, Iowa, and by the supreme court of said State, from buying or collecting said tax, and from doing any act or thing for or toward the collection
38 and payment of said tax for and to relator, as hereinafter set forth.

9. Def'ts deny that said city has a large amount of money in her treasury at this time, and further aver that the said city has no money in her treasury which has not been appropriated by the said city council for other and municipal purposes. Def'ts deny that said city council treated frivolously the demand of relator for payment of said bonds and judgment. Admit the city council refused to make an appropriation for the payment of said judgment and for the reasons herein stated by def'ts. Admit that the city treasurer is the legal custodian of the funds of the said city, and is only required to pay the same am't upon resolution of the city council and upon warrants drawn by the mayor and countersigned by the clerk of the city council. Deny that relator has no other remedy in the premises.

10. And for further cause def'ts show that on the 24 day of August, A. D. 1863, H. B. Ten Eyck and others, citizens and owners of property in the said city of Keokuk, filed their petition in the district court of Lee county, Iowa, against def't, the mayor of the said city, and against these defendants, the city council of the city of
39 Keokuk, and against the collector of the said city of Keokuk, alleging that the said bonds on which relator recovered his said judgment were and are null and void, and issued without authority of law, in which suit these defendants, the mayor and city council of the said city of Keokuk, were made def'ts, and duly served with notice on the 27th day of August, A. D. 1865, and prior to the bringing of the suit upon which said judgment was recovered by relator, in which cause the pl'ffs therein prayed for a writ of injunction to restrain said defendants last named and def'ts, the mayor and collector of said city of Keokuk, from levying, or collecting, or receiving any tax for the payment of the principal or interest of the said bonds, and from doing any act or thing towards collecting said tax for paying said bonds, and replication was made by the pl'ffs in the said cause to the Hon. Geo. G. Wright, one of the judges of the supreme court of the State of Iowa, for a writ of injunction to restrain the mayor and city council and collector of the said city from levying or collecting any general or special tax for the payment of the principal or interest on the said bonds and coupons upon which relator recovered his said judgment, and certain other bonds described in the said petition, and from doing act or thing in reference thereto, which writ of injunction was granted and ordered by the said
40 judge, and issued by the clerk of the said district court, and

was duly served upon these def'ts, the mayor and city council of said city and the collector of said city. And these def'ts did appear in said cause in said court, and defend the said cause and resist the claim and prayer of the pl'ffs therein for a decree making perpetual the said writ of injunction, and such proceedings were had in the said cause that the pl'ffs therein did obtain a final decree therein, making perpetual the said preliminary injunction and forever restraining the city council of the said city, and the mayor and collector of the said city, and their then agents, servants, and attorneys, or any of them, and their successors in office, from levying or collecting any and all taxes for the payment of any and all railroad bonds, so called, therefore issued by the city, including the said bonds and coupons upon which relator recovered his said judgment, and from doing any other act or thing towards the collecting of any tax for the payment of the said bonds, and the said court did thereon adjudge a decree that the said bonds were wholly and utterly illegal and void, and were and are not binding upon the said city, and that the said officers of the city were enjoined and prohibited from doing any act or thing in or towards the collecting of any tax for the payment
41 of said bonds, which judgment, upon appeal being taken by said def'ts, was affirmed by the supreme court of the said State of Iowa, at the December term, A. D. 1863, thereof, and the same is in full force and unreversed and binding upon defendants. Def'ts file herewith a certified transcript of the record of the said cause in the district court of Lee county, Iowa, and the supreme court of the said State, and make the same a part of this their answer to the said writ, and further state that the said judgment and decree of the *the* said district court and of the supreme court of Iowa are still in full force and effect and unreversed.

Def'ts, the mayor and city council of the said city, state that they are and ever have been ready, willing, and well disposed to obey the said writ of mandamus, and to do and perform all of the acts and things thereby required of them by this honorable court, but have been and are restrained and enjoined therefrom by the said order and injunction of said district court of Lee county and the supreme court of the State of Iowa, and that they are unable by reason of the premises from doing any of the acts required by said writ.

Def'ts further state heretofore and now if they had proceeded or should now proceed to do the said acts and things required of
42 them by this court, they would be guilty of contempt of the district and supreme court of the State of Iowa, and would be attached and arrested for contempt of the said courts wherefore they submit to this honorable court that they should not be required or further ordered to buy and collect any further tax or pay or provide for the payment of said judgment, or do any other act which would be in violation of the order and injunction of the said courts of said State, and that the said writ of mandamus should be discharged as to these def'ts.

Def'ts, the clerk and treasurer of said city, say, that there never has been any demand made upon them by relator to do the acts re-

quired of them in said alternative writ, and they have never refused to do the same, and def't, the clerk of said city council, say, that he could not draw any order upon the treasurer of said city, unless and until required to do so by resolution of the city council, and no such resolution has ever been passed by the city council.

The treasurer of said city *said city* says that he could not pay said money except upon the order or warrant of the city council, signed by the mayor of said city and countersigned by the clerk of the city council, and no such warrant or order has been drawn upon or presented to him.

43 The mayor of the said city says further that he has no authority to sign a warrant or order upon the treasurer of the city for the payment of said judgment, unless and until ordered so to do by a resolution of the city council of the said city, and no such resolution has ever been passed by the said city council, and no demand has been made upon him by relator to draw or sign any warrant or order upon said treasurer.

And def'ts, the clerk of the city council of said city and the treasurer of said city, further state that they are the agents of the said city council appointed by them, and that under the said injunction they or the agents of said city council are forever prohibited and enjoined from doing any act or thing towards the levying or collecting any tax for the payment of the said judgment, and that for the reasons stated they are wholly unable to do as by said alternative writ required and commanded.

Wherefore def'ts pray that the said writ of mandamus, and the rule granted upon these defendants to do and perform the several acts and things therein required, may be discharged, and that these defendants may severally be dismissed from further answering thereto, and these proceedings be quashed.

H. STRONG, *Att'y for Def'ts.*

44 I, William Patterson, being duly sworn on oath, state that I am mayor of the city of Keokuk, and president of the city council of said city, and knowing to the facts stated in the foregoing answer, and authorized by the said city council to make this affidavit, and that I believe the allegations in said answer contained, and the matters and things therein stated, are true; and I, B. S. Merriam, being duly sworn on oath, state I am the clerk of the city council of the said city, and that the matters and things alleged and set forth in the foregoing answer to the alternative writ of mandamus are true, as I truly believe; and I, Henry K. Love, being duly sworn, on oath state that I am the treasurer of the city of Keokuk, and that the matters and things set forth and stated in the foregoing answer are true, as I truly believe.

WM. PATTERSON,
Mayor of the City of Keokuk,
And President of the City Council of City of Keokuk.
B. S. MERRIAM,
Clerk of the Council of the City of Keokuk.
H. K. LOVE,
Treas. of the City of Keokuk.

STATE OF IOWA, *Lee county:*

Subscribed and sworn to by William Patterson, as mayor of city of Keokuk, Iowa, and President of city council, and by B. S.
45 Merriam, clerk of city council, and H. K. Love, as treasurer of said city, this 10th day of October, A. D. 1865, before me, D. H. Le Suer, clerk of the district court of Lee county, Iowa.

Witness my hand and seal of said court.

[SEAL.] D. H. LE SUER, *Clerk D. C.*

STATE OF IOWA, *Lee county:*

Subscribed and sworn to this 10th day of October, A. D. 1865, by William Patterson, mayor of the city of Keokuk, and president of city council, and by B. S. Merriam, clerk of the city council of said city, and by H. K. Love, treasurer of the said city, before me, Edward Mumm, a notary public in and for Lee county, and State of Iowa.

Witness my hand notarial seal on said day.

EDW'D MUMM,
Notary Public, Lee co., Ia.

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl k.*

On this day, to wit, the 13th day of October, A. D. 1865, defendants, by their attorney, filed in said clerk's office, their transcript of record from Lee county, district court of Iowa. Which said transcript is in words following:

46 In the district court of the 1st judicial district held at Keokuk State and county aforesaid, his honor Francis Stringer, judge, presiding.

STATE OF IOWA, *County of Lee:*

Be it remembered that heretofore, to wit, on the 24th day of August, A. D. 1863, a petition was filed in the above-named court, in words and figures following, to wit:

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, Uriah Raplee, pl'ffs,
vs.
THE MAYOR AND CITY COUNCIL OF THE CITY of Keokuk, and the collector of said city, def'ts.

47 Page 1. Your petitioners, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, Uriah Raplee, pl'ffs herein, represent that they are citizens and residents of the city of Keokuk, Lee county, and State of Iowa, and are the owners of property, real and personal, therein, subject to taxation.

2d. Pl'ffs, for themselves and other citizens too numerous to be

joined in this suit, further state that heretofore, to wit, on or about the 1st day of January, A. D. 1856, the city council of Keokuk, a municipal incorporation existing under the laws of the State of Iowa, by resolution of the said city council, subscribed 400,000 dollars to the capital stock of the Keokuk, Fort Des Moines & Minnesota Railroad Company, an incorporation existing under the laws of the State of Iowa, to enable the said company to construct a railroad from the city of Keokuk, in Lee county, to the city of Fort Des Moines, in Polk county, in said State.

Pl'ffs further state that the mayor of the said city did, in pursuance of a resolution of the city council of said city, did execute and issue and deliver to the said railroad company, in payment of said subscription, 400 bonds in the name of said city, of 1000 dollars, of said date, payable 20 years from date, with 8 per cent. per annum interest, payable semi-annually, according to certain interest coupons attached thereto, all of which bonds, except 2, are outstanding and unpaid.

48

2d. Pl'ffs further state that the said city council of said city did, on or about July 1st, 1856, subscribe in name of said city one hundred thousand dollars to the capital stock of the Mississippi & Wabash Railroad Company, a corporation existing under the laws of the State of Illinois, to aid in building a railroad in said State of Illinois, and did execute therefor, through the mayor of the said city, the bonds of the said city, being one hundred bonds of one thousand dollars each, payable 20 years from date, with 8 per cent. interest p'r annum, payable semi-annually, according to the tenor and effect of certain interest coupons thereto attached, which bonds are wholly outstanding and unpaid.

3d. And the said city council of said city did, by resolution of said board of March 1st, 1856, in behalf of said city, subscribe one hundred thousand dollars to the capital stock of the Keokuk, M't Pleasant, and Muscatine Railroad Company, an incorporation existing under the laws of the State of Iowa, to aid said co. in building a railroad from the city of Keokuk, Iowa, to the city of Muscatine, Iowa, and did in the name of said city, through the Mayor thereof, execute and deliver to said railroad company 100 bonds, of 1,000 dollars each, payable 20 years from date, to said railroad company or bearer, with 8 p'r cent. per annum interest, according to certain interest coupons attached thereto, which bonds are yet outstanding and unpaid.

49

4. Pl'ff further states that the city council of said city did, July 3d, 1857, through the mayor of said city, and in the name of the said city, execute and deliver to said Mississippi and Wabash Railroad Co., 30 other bonds of 1,000 dollars each, to aid in building said road, and in payment of further subscription of stock thereto, 16 of said bonds payable Sept. 1st, 1859, and 16 of them payable Sept. 1st, 1861, and 18 of them payable Sept. 1st, 1863, to said railroad co. or bearer, and all drawing interest at 8 p'r cent. per annum, as per interest warrants or coupons attached, and none of said bonds have been paid and are all outstanding.

5. Pl'ff further states that the city council of said city did, on the 1st day of May, 1857, in the name of said city, by her mayor, execute, issue, and deliver to the said Keokuk, Fort Des Moines, and
50 Minnesota railroad Co., 150 other and additional bonds, of 1,000 dollars each, in payment of a subscription to the capital stock of said railroad company, and payable, 50 of them in one year, and 50 of them in 2 years, and 50 of them in three years from date, with 10 per cent interest p'r annum, payable semi-annually, according to tenor and effect of certain interest coupons thereto attached, which bonds are wholly outstanding and unpaid.

Pl'ffs state that all of the said bonds hereinbefore described, said bonds and coupons have been assigned by the said several railroad companies to which they were issued, and are now in the hands of third persons, who bought the same in open market, before maturity, for a valuable consideration, and that the holders of said bonds are unknown to pl'ffs, and are too numerous to be made parties to this suit.

6. Pl'ffs further state that the city council of said city had no authority to make the said subscription to said railroad companies, or any of them, nor to execute, or issue, or deliver to them, or any of them, the said bonds of said city, with the coupons annexed in the name of said city; that the said city received no consideration for the said bonds or coupons except certificates of stock in the
51 said several railroad companies, to an amount equal to the bonds issued, that the said railroad companies were organized and formed to construct railroads without the limits of the said city, and said railroad companies are private corporations for procuring profit, in no way connected with the city, and from which said city derives no profit or emoluments.

7. That said city of Keokuk is a municipal, and had no authority under the charter to construct railroads without her corporate limits, or to issue bonds to aid in the construction of any of the said railroads.

8. That said bonds were executed and issued by the proper officers of said city, under the direction of said city council, and in pursuance of a resolution thereof, without authority of law, and were and are absolutely void.

That the issuing of the said bonds was a fraud upon the rights of pl'ffs; that the several acts of the legislature of the State of Iowa, authorizing the issue of the bonds described in the said counts of pl'ffs petition, being an act entitled and approved , and the acts of legislature of said State, curing,
52 establishing, and making legal and binding the said bonds described in said counts of this petition being an act entitled an act and approved, to which acts reference is hereby made, were and are null and wholly unconstitutional and void, and did not authorize the issuing of the said bonds, or any of them, or legalize or make binding the said bonds, or any of them, which had been issued.

9. Pl'ff further states that the city council of the said city have

levied a special tax of one per cent. upon the assessed value of all the taxable property, real and personal, within the limits of the said city subject to taxation for State and county purposes, according to the assessment made by the city assessor for the year A. D. 1863, to be applied towards the payment pro rata of the interest due on said bonds, and the clerk of the said city, in pursuance of a resolution of said city council, has made out a tax list of all the property in said city, including that of your petitioners, in accordance with the said assessment and levy.

53 10. Pl'ffs further state that the collector of said city, in pursuance of a resolution of the city council of said city, is now about to collect the said special tax for the payment of interest upon said bonds, and is about to proceed and advertise and sell, under the laws and ordinances of the said city of Keokuk, all the property, real, personal, and mixed, within the limits of said city, subject to taxation, including the property of your petitioners, for the payment of the said special tax, which, under the laws and ordinances of said city, has been delinquent.

11. Pl'ffs state that the said bonds issued as aforesaid in the name of the said city for subscription of stock to said railroad companies without authority of law amount now, with the accumulated unpaid interest, to over one million of dollars, which is a great and ruinous burden and incumbrance upon the property of your petitioners lying without the said city, and upon the property of all the citizens of said city lying within the limits thereof; that unless restrained by your honorable court the said city collector will proceed to advertise and sell the property of your petitioners, and pay the said special tax levied as aforesaid, by which your petitioners, and all other property holders will sustain great loss and damage, and your petition-

54 ers are without remedy at law in the premises.

12. Pl'ffs further state that the said city council and mayor of the said city are about and intend and threaten to proceed from year to year to levy a further and additional special tax each year upon all of the taxable property in said city for the payment of the principal and interest of the said bonds as they mature, unless restrained from so doing by your honorable court, and to sell the property of pl'ffs and other property-holders for that purpose, by which pl'ffs and others will sustain further and additional loss and damage. Pl'ffs state that the said city council have no authority to levy any tax for the payment of principal or interest upon said bonds, and the collector of said city has no authority in law to collect said tax, and the taxable property of your petitioners and others in said city should not be made liable for the payment of said tax.

Wherefore pl'ffs make the said city council and the mayor and collector of said city defendants herein, and pray that they may be required to answer this petition; and pl'ffs further pray that the collectos of the said city be perpetually enjoined from collecting said tax or any tax for the payment of said bonds, or the interest

55 thereon, and from advertising or selling any of the taxable property within the city for that purpose; that the city coun-

cil and mayor of the said city, and their successors in office, be perpetually enjoined from levying any special or general tax or assessment upon any of the taxable property within the limits of the said city for the payment of the principal or interest of the said bonds, and that each and all of the said defendants, and their successors in office, be restrained and forever enjoined from doing any act or thing in or towards levying or collecting any tax or assessment, general or special, upon the taxable property in said city for the payment of the principal and interest upon said bonds, or any of them, and from receiving or collecting any tax for that purpose, and that the levy of the said special tax be declared illegal, null, and void, and no lien upon any of the property subject to taxation within the limits of the said city, and said property be declared free and clear of the lien of said tax, and that to this end a writ of injunction issue, which, upon final hearing, your petitioners pray may be perpetual on behalf of pl'ffs and all other property-holders of said city upon said defendants and their successors in office, and for other relief equitable in
56 the premises.

RANKIN & McCRAREY,
Att'ys for Petitioners.

STATE OF IOWA, *Lee county, ss:*

I, H. B. Ten Eyck, one of the *the* pl'ffs in the above-entitled suit, being duly sworn, on oath state that I believe the allegations contained in *in* foregoing petition are true.

H. B. TEN EYCK.

STATE OF IOWA, *Lee county, ss:*

Subscribed and sworn to by H. B. Ten Eyck, before me and in my presence, this 20th day of August, A. D. 1863.

Witness my hand and notarial seal.

[SEAL.] J. D. SPRINGER, *N. P.*

Following is an order allowing the injunction, to wit:

STATE OF IOWA, *ss:*

Let the writ of injunction issue as prayed for, the petitioners giving bond in the sum of ten thousand dollars ($10,000) to the approval of the clerk of the district court.

Kiosanqua, Aug. 21st, 1853.

GEO. G. WRIGHT,
Judge Supreme Court.

To the clerk district court Lee county, Iowa.

57 And afterwards, to wit, on the 24th day of August, a bond was made, in words and figures following:

Know all men by these presents that we, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, and Uriah Raplee, principals, and A. L. Connable, sureties, are

held and firmly bound unto the city of Keokuk and the collector in the penal sum of ten thousand dollars, for the payment of which we obligate ourselves.

The condition is that the said principals have filed their petition in chancery in the office of the clerk of *the clerk of* the district court of Lee county, Iowa, at Keokuk, against the mayor and city council of the city of Keokuk and the collector, praying an injunction to prevent the collection of taxes to pay the interest on certain railroads, bonds, &c., and an injunction has been allowed. Now, if the said pl'ffs will pay all the damages that defendants may sustain by reason of the wrongful allowance of said injunction, and save said defendants harmless from all damages in case said injunction is dis-
58 solved, then this obligation is void; otherwise, in *in* full force.

Witness our hands August 24, 1863.

H. B. TEN EYCK.
C. H. PERRY.
J. B. HOWELL.
J. W. CLEGHORN.
A. L. CONNABLE.
R. B. OGDEN.
U. RAPLEE.

Approved and filed Oct. 9th, 1863.

CHARLES DOER, *Cl'k D. C.*,
By EDW'D MUMM, *Dep.*

And a writ of injunction was issued of date October 9th, 1863, as follows:

STATE OF IOWA, *Lee county, ss :*

To the mayor and city council of the city of Keokuk, and the collector of said city, your agents, attorneys, and servants, and each and every of them :

Whereas H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, and Uriah Raplee, have filed their bill in chancery in our court, within and for the county of Lee, against you, the said mayor and city council, in the city
59 of Keokuk, and the collector of said city, touching the matters therein complained of, and which bill is therein pending ; and whereas said H. B. Ten Eyck *et al.*, above named, have obtained the allowance of an injunction from the Hon. Geo. F. Wright, judge of the supreme court of Iowa, as prayed for in said bill, and the said H. B. Ten Eyck *et al.*, having filed a bond, with approved security, as required by the order of allowance :

We, therefore, in consideration of the premises, do strictly command and enjoin you, and your agents, attorneys, and servants, and all and every of you, that you and every of you, and your successors in office, do altogether desist from levying any special tax or general tax or assessment upon any of the taxable property within the limits of the city of Keokuk, for the payment of the principal or interest of certain bonds mentioned in said bill, (as railroad bonds,) and that each and all of you, and your successors in office, be restrained and

forever enjoined from doing any act or thing in or towards levying or collecting any tax, general or special, or assessment upon the taxable property of the said city, for the payment of the principal or interest upon said bonds, or any of them, and from securing or col-
60 lecting any tax for that purpose, under the penalty of the law hence arising.

Witness Charles Doer, clerk of the district court in and for said county, this 9th day of Oct., 1863.

CHARLES DOER, *Clerk.*
By EDW'D MUMM, *Dep.*

Upon which is indorsed the return of the sheriff in words and figures as follows :

This writ came into my hands on the 12th day of April, 1864, and on same day I served the same on A. G. Richardson, collector of the city of Keokuk, C. F. Davis and Wickersham, members of the city council of the city of Keokuk, by reading the same to each of them in the city of Keokuk, Lee county, Iowa ; and on the 13th day of April, 1864, I served the same on John Cleghorn, George Montague, and Cicero Hughes, members of the city council of the city of Keokuk, and J. M. Hiatt, mayor of said city, Lee county, Iowa, by reading the same to each of them in the city of Keokuk, Lee county, Iowa ; and on the same day I served the same on J. H. Caton and Wm. Abbott, members of city council of said city of Keokuk, by reading the same to each of them in the city of Keokuk, Lee
61 county, Iowa. H. B. Ten Eyck, a member of said city council, cannot be found in my county.

ISRAEL ANDERSON,
Sheriff of Lee County, Iowa.

I also, on the 18th day of April, 1864, at 9 o'clock, p. m., served the within writ on the mayor and city council of the city of Keokuk, in session, the mayor and councilmen being all present, by reading the same to them personally while they were in session, in the city of Keokuk, Lee county, Iowa.

ISRAEL ANDERSON,
Sheriff of Lee County, Iowa.

And afterwards an original notice was issued and served, in words and figures as follows :

STATE OF IOWA, *Lee county, ss:*

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Wolcott, John W. Cleghorn, Uriah Raplee.
vs.
62 THE MAYOR AND CITY COUNCIL OF the city of Keokuk and the collector of said city.

You are notified that there is now on file in the office of the clerk of the district of Lee county, Iowa, at Keokuk, the petition of H. B.

Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee, claiming against the defendants, the mayor and city council of the city of Keokuk, and the collector of said city, an injunction restraining the defendants from levying and collecting taxes of the plaintiffs and out of their property in the city of Keokuk, and the citizens and residents of Keokuk, Lee county, Iowa, to pay the interest or principal of certain bonds issued by said city to certain railroad corporations in the petition described; said petition alleges that said bonds were issued without the authority of law, and that the defendants are proceeding to collect the interest due on said bonds by distraining, &c.

Said petition prays for a perpetual injunction and for a general relief.

Unless you appear and answer said petition on or before the 2d day, at noon, of the September term, 1863, of said court, commencing on the first Monday of September, a decree will be taken as if
63 confessed, and in accordance with the prayer of the petition.

RANKIN & McCRARY,
Att'ys for Pl'ffs.

Upon this motion is indorsed the following petition by the sheriff:

This motion came into my hands August 27, 1863, and I served the same on the mayor of the city of Keokuk, by reading the same personally to George B. Smyth, mayor of said city, and by delivering to him a true copy thereof in Keokuk, Lee co., Iowa, Aug. 27, 1863; served the same also on the collector of said city, by reading same personally to A. G. Richardson, the collector of said city, and by delivering to him a true copy thereof, in Keokuk, Lee co., Aug. 27, 1863; served the same also on the city council of the city of Keokuk, by reading same personally to B. S. Merrian, clerk of said city council, and by delivering to him a true copy thereof in Keokuk, Lee county, Iowa, August 27, 1863.

N. G. HEDGES,
Sheriff of Lee co., Iowa,
By D. B. SMITH, JR., *Deputy.*

And afterward, to wit, on the 24th day of August, A. D.
64 1863, a demurrer was filed, in words and figures following:

Demurrer by def'ts.

District court of Lee county, Iowa, at Keokuk.

H. B. TEN EYCK and OTHERS, pl'ffs,
v.
THE MAYOR OF CITY OF KEOKUK and OTHERS, def'ts.

Now comes the defendants, the mayor of the city of Keokuk, by Henry Strong, their attorney, and demur to the petition of pl'ffs, and state the said petition does not state facts sufficient to constitute a cause of action, and entitle the pl'ffs to the relief claimed.

1. Petition shows that said bonds, executed and issued in name of the city of Keokuk were regularly issued by the proper officers of the said city, in pursuance of a resolution of the city council of said city, in payment of a subscription by said city to the railroads named.

2. The said city of Keokuk, through her proper officers, had a right to subscribe to the capital stock of said railroad, and to issue the bonds of the city in payment thereof, and the city council
65 of said city have a right to levy a tax upon the taxable property in said city, in payment of the interest and principal of said bonds as they mature, and the city collector is authorized and legally bound to collect the said tax after the same has been levied.

3 Under the constitution and laws of the State of Iowa, the said city of Keokuk, through her proper officers, had full authority to execute and issue the said bonds; and pl'ffs' petition shows that said city did receive a valuable consideration for the issuing of said bonds, in an equal amount of certificate of stock of the several R. R. companies to which said bonds were issued.

4. Pl'ffs' petition shows upon its face that said bonds are now in the hands of innocent holders, who bought them before maturity for valuable consideration, and being in the hands of such holders they are binding upon the city.

5. Pl'ffs petition shows that said bonds described in the counts of their petition were ratified and legalized by an act of the general assembly of the State of Iowa, and are therefore legal and binding upon said city.

66 6. Pl'ffs petition shows that the bonds described in the counts of their petition were authorized by an act of the general assembly of the State of Iowa, and were issued in pursuance of said act, and are therefore legal and binding upon said city.

7. The petition of pl'ffs shows that said bonds are legal, valid, and binding upon said city, and the property of pl'ffs, and other persons in said city, is liable to be assessed and taxed in the manner prescribed by law for the payment of same, as they mature.

8. There is no equity in petition of pl'ffs as shows upon its face, and petition shows that pl'ffs are not entitled to the relief claimed, and def'ts pray that the injunction granted be dissolved and def'ts' bill dismissed.

HENRY STRONG, *Att'y for Defendants.*

And afterwards, to wit, on the 19th day of September, A. D. 1863, a decree embodying a bill of exception was filed, as follows :

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. W. Perry, Arthur Wolcott, John W. Leghorn, and Uriah Raplee
67 *vs.*
THE MAYOR and CITY COUNCIL OF THE city of Keokuk, the collector of said city, &c.

This cause came up for hearing on the petition of pl'ffs, property-

holders of the city of Keokuk, and representatives of all of the holders of property in said city, and the demurrer of defendants; the former represented by Rankin & McCrarey, their attorneys, and the latter by Henry Strong, their attorney, and the court, being advised in the premises, finds that said city, through its mayor and council, about to levy a heavy tax on the taxable property of the plaintiffs and other property-holders, to pay the interest on certain railroad bonds in the petition described.

The court further finds that said bonds are void and of no binding obligation, they having been issued without the authority of the law; the court, therefore, overrules the demurrer.

And the defendants having decided to stand on their demurrer and not answer, the court orders, adjudges, and decrees that the temporary injunction allowed in this case be made perpetual.

68 It is further ordered, adjudged, and decreed that the defendant, the city of Keokuk, through its officers aforesaid, levy no taxes for the purposes specified in the petition, and that the collector of said city, and his successors, collect no tax for the payment of any of the railroad bonds described, or the interest on the same. The defendants excepted at the time to the several rulings, orders, and decrees, and asked the court to sign this bill of exceptions and decree, which is done Sept. 19, 1863.

FRANCIS SPRINGER, *Judge.*

And afterwards, on the 2d day of October, A. D. 1863, an appeal was filed in this case as follows :

District court, Lee county, Keokuk, Iowa.

H. B. TEN EYCK and others
vs.
MAYOR OF CITY OF KEOKUK and others.

To H. B. Ten Eyck and others, pl'ffs, or Rankin & McCrarey, their att'ys, and Chas. Doerr, clerk of said court :

You are hereby notified that defendant has appealed from the judgment of said district court in the above-entitled cause to the supreme court of State of Iowa.

HENRY STRONG, *City Att'y.*

69 We hereby acknowledge service of foregoing notice of appeal, and waive time and agree that this case shall be heard at October term, A. D. 1863, of supreme court at Davenport, Oct. 1st, 1863.

CHARLES DOERR, *Clerk, D. C.,*
By EDM'D MUMM, *Dep'y.*

RANKIN & MCCRAREY, *Att'ys for Pl'ffs.*

STATE OF IOWA, *Lee county :*

I, D. H. Le Seur, clerk of district court, State and county aforesaid, hereby certify that the foregoing is a true transcript of the papers and record entries made in the above-entitled case.

Witness my hand and seal of the court, this 7th day of March, A. D. 1865.

[SEAL.] D. H. LE SEUR, *Clerk.*

[U. S. rev. stamp, 5 ct., cancelled.]

STATE OF IOWA, *County of Lee, ss:*

I, Francis Springer, sole judge of the district court of the
70 first judicial district, (in which is the county of Lee,) hereby certify that D. H. Le Seur, whose genuine signature appears to the foregoing certificate, was at the date thereof, and still is, clerk of the district court within and for the county of Lee, duly elected and qualified; that the seal by him thereto affixed is the seal of said court, and that his attestation is in due form.

In testimony whereof, I hereunto subscribe my name this 4th day of April, 1865.

[SEAL.] FRANCIS SPRINGER, *Judge.*

[5-cent rev. stamp.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 13th day of October, A. D. 1865, came said defendants, by its attorneys, and filed a transcript of a record from the supreme court of Iowa, which said transcript is in the words and figures following, to wit:

71 THE STATE OF IOWA, *ss:*

The State of Iowa to the district court for the county of Lee:

Whereas the supreme court of said State, being lately certified of the record and proceedings in a certain cause which was in the district court for the county of Lee and State aforesaid, wherein H. B. Ten Eyck, plaintiff, and the mayor and city council of Keokuk, defendant, in which said cause judgment was rendered against the said defendants, from which judgment so rendered the said defendants appealed to the said supreme court, and the said court having duly examined the record and proceedings aforesaid in the premises, at the capitol, Des Moines, in said State, on the 9th day of Jan'y, 1863, did affirm the judgment aforesaid, as rendered in the court below:

Therefore you are hereby commanded that with the speed which of right, and according to law, you may, you proceed in the same manner as if no appeal had been taken up and prosecuted in this court, anything in the record or proceedings aforesaid heretofore certified to the contrary notwithstanding.

Witness, Lewis Kinsey, clerk of the supreme court, with the seal of said court hereunto affixed at Des Moines, this 15th day of March, A. D. 1865.

[SEAL.] LEWIS KINSEY,
Clerk of the Supreme Court.

72 In supreme court, Iowa, December term, 1863.

H. B. TEN EYCK
vs.
THE MAYOR AND CITY COUNCIL OF THE CITY of Keokuk, app'l'ts. } Appeal from Lee county.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment and proceedings of the court below, and file their written opinion.

It is therefore considered by the court that the judgment of the court below be affirmed, and that a writ of procedendo issue accordingly, and that the appellee have and recover from the app'l'ts his costs in this behalf laid out and expended at this court, taxed at $7 25, and that execution issue therefor.

A true copy from the records.

[SEAL.] LEWIS KINSEY, *Clerk.*

[U. S. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

73 On this day, to wit, the 13th day of October, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his demurrer in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of relator to the answer and return of respondents.

United States circuit court for the northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* David B. Moses,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, *et al.*, respondents. } Mandamus.

1st. And now comes the relator in the above-entitled proceedings and demurs to the answer and return of respondents to the alternative writ of mandamus, and for cause of demurrer to so much of said answer and return of said parties as is contained in paragraphs or subdivision numbered 2½ says:

Said matters therein set up are insufficient as a defence to relief prayed for, because the respondents are estopped, by the judgment rendered in this court upon said bonds, to deny their validity and constitutionality.

74 2d. And relator further demurring to paragraphs or subdivisions of said answer and return, numbered from 4 to 9, inclusive, taken together, says the matters and things set up therein are both insufficient in law to debar relator of the relief prayed for, and that they disclose facts which entitle him to a peremptory writ herein.

1. It is no sufficient answer that respondents received "city scrip" and "city warrants," instead of money called for, to the amount of $20,000, in satisfaction of said levy and tax pro tanto, because it is admitted said "scrip and warrants" have always been below par, and relator was not a party consenting to receive such "evidence of indebtedness" in payment of his bonds.

2. Because said city received said city scrip and warrants in satisfaction of said levy and tax in her own wrong, and in denegation of rights of relator, nor have said respondents taken up and settled an amount of bonds and coupons equal to amount of costs, scrip, and warrants received and collected for that purpose.

3. Because is no law authorizing said city to issue such scrip or receive same in liquidation of said tax.

4. It is immaterial whether respondents tendered or relator refused scrip and warrants for his bonds. He had a right to demand money; bonds called for money.

75 5. Because the balance of the levy of said tax, to wit, $37,336 16, was in law and fact collected and satisfied by reason of the delinquent lots in Keokuk being "struck off to said city, as provided in the ordinances of said city," and by reason of said "property being so noted and recited upon the books of said city."

6. The printed copy of the ordinances of said city are referred to, admitted as part of the return of respondents for the purpose of the inspection and consideration of the court, and these show said city becomes a purchaser of such "delinquent lots" so "struck off" to her, or at least acquires a new and different lien, (from the levy of the tax,) drawing a different rate of interest, and to be removed or redeemed in a different manner.

7. There is no law or ordinance providing for the resale of such "delinquent lots," or the further enforcement of the original tax.

3d. And for cause of demurrer to the tenth subdivision of the answer of respondent's setting up the proceedings of injunction had against the respondents at the suit of H. B. Ten Eyck *et al.* in the supreme court of Iowa, relator says that same is not sufficient answer in law why the writ prayed for by him should not issue, and thereupon assigns—

1. That the judgment in said record contained does not
76 enjoin respondents from paying over and accounting for the "railroad taxes" already received, but only enjoins the future collection of such taxes.

2. For that relator was no party to said injunction proceedings, and the State court of Iowa had not jurisdiction of the necessary parties, the bondholders.

3. Because said decision of the supreme court of Iowa declaring said railroad bonds invalid and unconstitutional, and perpetually enjoining the collection of same, was had long after the execution and sale of same to "innocent purchasers," as appears by the record, and reversed earlier established and settled decisions of the same court, and this court will not in such case follow the State court.

4. Because this court, since the decision of Ten Eyck *et al.* *v.* City

Council of Keokuk *et al.*, aforesaid, having held said bonds thus enjoined to be valid and constitutional, and given relator judgment upon them, has the right to coerce and enforce the production of the trust funds presumed to be in the hands of respondents to the liquidation of said unsatisfied judgment.

5. Because it is not competent for the State court of Iowa to oust this court of its jurisdiction to enforce its own judgments, and no decree of supreme court of State of Iowa to which relator was not a party is of any valid or binding force to bar relator from using
77 the process of this court to collect his judgment.

6. Because said injunction suit in the State court of Iowa was instituted and said decree obtained by consent and collusion of respondents, and to forestall action for the enforcement of the collection of said railroad bonds in the United States courts.

Whereupon the relator prays the award and issuance of a peremptory writ of mandamus herein.

H. SCOTT HOWELL, *Att'y for Relator.*

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 13th day of October, A. D. 1865, said parties, by their attorneys, filed in said clerk's office their agreement in said entitled cause, which said agreement is in words and figures following, to wit:

U. S. circuit court, Ill., northern district.

U. S., *ex rel.* David B. Moses,
v.
CITY COUNCIL OF CITY OF KEOKUK, IOWA, *et al.* } Mandamus.

It is hereby agreed by the parties to the abovenamed action that either party may read on evidence in the trial of said action
78 any of the ordinances, city charter amendments thereto, and laws of the State of Iowa contained in a printed volume published by authority of the city council of the city of Keokuk in 1860, entitled "The charter and ordinances of the city of Keokuk, (to August 6, 1860,) together with acts of the general assembly relating to the city, &c.," without further proof or certificate. It is further agreed that the record of proceedings in the case of Ten Eyck and others *v.* City of Keokuk may be read in evidence without being certified by judge of the court.

Sept. 23, 1865.

H. STRONG, *Att'y for City.*
H. SCOTT HOWELL, *Att'y for Relator.*

[U. S. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the seventeenth day of October, in the adjourned October term of said circuit court, A. D. 1865, in the record

of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of David B. Moses,
vs.
79 THE CITY COUNCIL OF THE CITY OF Keokuk, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, Iowa, and the clerk of the city council of the city of Keokuk, Iowa. } Petition for mandamus.

This day came relator in the above-entitled proceeding, by H. Scott Howell, his attorney, and came also respondents above-named, by H. Strong, their attorney, and this cause came on for hearing upon the demurrer of relator to the return and answer of the respondents, together with the agreement of said parties on file respecting the admission of the book of printed ordinances of the city of Keokuk, Iowa; and after the hearing of arguments and consideration of the premises, the court sustained the demurrer as to count number two and a half of defendants' answer, and overrules said demurrer as to all the other counts in said answer; and relator, by his counsel at the time, excepts to said ruling. It is thereupon considered and ordered that respondents go hence without day, and the rule heretofore granted be discharged, and that they have and
80 recover of the relator their costs in this behalf to be taxed.

On this day, to wit, the seventeenth day of October, A. D. 1865, came said relator by his attorneys, and filed in said clerk's office his bill of exceptions in said entitled cause, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

United States circuit court, northern district.

UNITED STATES OF AMERICA, *ex rel.* David B. Moses,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, Iowa, the clerk of the city council of the city of Keokuk, Iowa, respondents. } In error.

Be it known that on this 17th day of October, 1865, at the October term of said court, there came the United States, at the relation of David B. Moses, by H. Scott Howell, and Woodbridge & Grant, his att'ys, and there came also the respondents, the city council of the city of Keokuk, Iowa, *et al.*, def'ts, by Henry Strong, their
81 att'y, and this case of mandamus came on to be heard upon the issue joined thereon by the demurrer of the relator to the

answer and return of respondents to the alternative writ of mandamus issued herein, in connexion with the written agreement of parties on file in this cause respecting the introduction and consideration of the volume of the printed ordinances of said city, which answer and return of respondents is in words and figures following, to wit:

(Said answer is correctly copied on pages 32 to 72, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*)

And the demurrer of relator thereto is in the words and figures following, to wit:

(Said demurrer is correctly copied on pages 73 to 77, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*)

And which agreement for the introduction and consideration by the court of the printed ordinances, &c., of said city of Keokuk,
82 is in the words and figures following, to wit:

(Said agreement is correctly copied on pages 77 to 78, inclusive, of this transcript.

WM. H. RRADLEY, *Clerk.*)

And after argument of counsel, the court, on consideration of the premises submitted thereto, doth sustain the said demurrer of the relator to the paragraph or subdivision of said answer, and return as therein numbered two and a half, (2½,) and doth overrule the said demurrer upon each and all other grounds therein set forth, to which latter ruling of said court, overruling said demurrer upon the causes stated, and to each of them the said relator at the time then and there excepted, and standing upon his said demurrer, and each and every cause of demurrer therein set out, prays that this bill of exceptions may be signed, sealed, and made part of the record, which is accordingly done.

Oct., 1865.

DAVID DAVIS. [L. S.]
THOMAS DRUMMOND. [L. S.]

Indorsed: Filed Oct. 17th, 1865.

WM. H. BRADLEY, *Clk.*

83 On this day, to wit, the 28th day of November, A. D. 1865, came said relator, by his attorneys, and filed in said clerk's office his appeal bond in said entitled cause, which said bond is in words and figures following, to wit:

Bond.

Supreme court of the United States.

UNITED STATED OF AMERICA, *ex rel.* David B. Moses, relator,
v.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, the mayor of the city of Keokuk, Iowa, the treasurer of the city of Keokuk, Iowa, the clerk of the city council of the city of Keokuk, Iowa, respondents. } Mandamus, in error.

Know all men by these presents, that we, David B. Moses, relator, as principal, and as security, are hereby held and firmly bound unto the respondents named above, in the penal sum of five hundred dollars, to the payment of which well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

84 Sealed with our seals, and dated 24 Oct., 1865. Whereas the above-named David B. Moses, relator, has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment in the above-entitled suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named David B. Moses, relator, shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

DAVID B. MOSES. [L. S.]
WM. MOSES. [L. S.]

Sealed and delivered in presence of us—
THOS. L. THORNELL.
HENRY C. CONKLIN.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

85 William Moses, one of the subscribers to the above bond, being duly sworn, says that he resides in the city of Brooklyn, New York; that he is a householder, and worth the sum of five hundred dollars over and above all his debts and liabilities.

WM. MOSES.

Subscribed and sworn to before me this first day of Nov., A. D. 1865.

THOS. L. THORNELL, *Notary Public.* [SEAL.]

[5-cent rev. stamp, cancelled.]

Approved— THOMAS DRUMMOND.

Indorsed: Filed Nov. 28th, 1865.

WM. H. BRADLEY.

86 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the above and foregoing, from page one (1) to eighty-five (85) inclusive, to be a true and complete transcript of the record of all the proceedings which have been had in the cause in said court, wherein the United States of America on the relation of David B. Moses is plaintiff, and the city council of the city of Keokuk, Iowa, *et al.* are defendants, as appears from the records of said court now remaining in my custody, and that the original writ of error and citation issued herein by the plaintiff in error are herewith appended to said transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district of Illinois, this fourth day of December, A. D. 1865.

WILLIAM H. BRADLEY, *Clerk.*

[5-cent revenue stamp, cancelled.]

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